

Integrating a Human Rights-Based Approach in Development – with a focus on
Afghanistan's National Solidarity Programme

Thesis presented by Sulaiman Sarwary in fulfilment of the requirements for obtaining the
degree of Masters in Law (LLM) by way of research.

Kabul, Afghanistan and Christchurch, New Zealand

September 2016

Declaration

This research represents my own work. The views stated in this research are those of myself and not necessarily those of the University of Canterbury. Also, the work presented in this research is submitted for the first time as part of this degree and has not been submitted before to the University of Canterbury or another university.

Acknowledgement

All of this started when I moved to Afghanistan in early 2012, my place of birth, after having completed my undergraduate studies. I started working with the National Solidarity Programme (NSP), the largest development programme in Afghanistan's history and the second largest in the world, after the National Programme for Community Empowerment (PNPM) in Indonesia.

During my stay with the NSP, I visited many projects in the field where communities would benefit from basic rights. During the subsequent field visits, my interest grew in undertaking research in this area. I paid a visit to the University of Canterbury where I met Professor Karen Scott who liked the idea and encouraged me to write up a proposal and make an application for enrolment. I am immeasurably indebted to Professor Scott for her support and direction, in this regard.

I would like to thank Natalie Baird who agreed to supervise my research. Ms Baird introduced me to the world of human rights which is an integral part of my thesis. Ms Baird has provided detailed and very thorough feedback in improving the current version. Ms Baird, in fact, has been a source of immense inspiration throughout my studies.

I would like to extend my appreciation to Dr Jeremy Moses who kindly agreed to supervise my research from a development point of view which is essential for the realisation of human rights.

Both Ms Baird and Dr Moses have extended their generous and timely support in guiding me to complete my thesis. It has been a privilege to have their guidance and encouragement. I am extremely thankful and indebted to them.

I also thank the Law Librarians, both Sara Roberts and Theresa Buller, who have provided me with timely support and guidance on the New Zealand Law Style Guide.

Special thanks are also in order to all the interviewees including the community members without whose participation this research would not have been complete and meaningful. They have provided me with ideas and perspectives that would not be possible while carrying out research from the university campus.

Lastly, this research would not have been possible without the wonderful support of my wife, Alia Sarwary, and patience of our children, Oogai Sarwary and Atal Sarwary. My parents

and family have been a source of great inspiration to allow me complete my research. I dedicate my thesis to my parents who have always placed special emphasis on the value of education.

Table of contents

List of acronyms	page 8
Abstract	page 10
Introduction	page 11
Background	page 11
Purpose of research	page 11
Methodology	page 11
Statement of positionality	page 13
Structure	page 14
 1. Human Rights and Development - The Human Rights-Based Approach to Development	 page 16
1.1. Human Rights and Development – the current framework	page 16
1.2. United Nations Charter.....	page 17
1.3. Civil & Political Rights vis-à-vis Economic, Social & Cultural Rights	page 19
1.4. Are human rights really universal?	page 21
1.5. The concept of progressive realisation and states' obligation.....	page 23
1.6. Resurgence in economic, social and cultural rights?	page 26
1.7. The Declaration on the Right to Development (1986)	page 26
1.8. Vienna Declaration and Programme of Action (1993)	page 28
1.9. The Millennium Declaration	page 29
1.10. The World Outcome and Millennium Summits	page 30
1.11. How do human rights relate to the MDGs?	page 30
1.12. Weaknesses of the MDGs	page 31
1.13. The post September 2015 framework	page 32
1.14. Introduction to integrating human rights into development discourse	page 33
1.14.1. Needs-based approach vis-à-vis human rights-based approach	page 33
1.14.2. Different approaches to integrate human rights into development	page 35
1.14.2.1. Implicit human rights work	page 36
1.14.2.2. Human rights projects	page 36
1.14.2.3. Human rights dialogue.....	page 37
1.14.2.4. Human rights mainstreaming	page 37
1.14.2.5. Human-rights-based approach	page 37
1.15. Core principles of HBRA	page 39
1.15.1. Express application of human rights framework ...	page 39
1.15.2. Participation	page 40
1.15.3. Empowerment	page 42
1.15.4. Non-discrimination	page 42
1.15.5. Accountability	page 43

1.16. Conclusion	page 44
2. Introducing Development in Afghanistan.....	page 48
2.1. The magnitude of deprivation in Afghanistan after 9/11	page 48
2.2. Brief introduction to Afghanistan and its development context ...	page 50
2.3. The Human Rights framework in Afghanistan	page 51
2.4. Afghanistan's reporting to the Economic, Social and Cultural Rights and Human Rights	page 52
2.5. National Solidarity Programme	page 53
2.6. Projects under the NSP	page 56
2.7. Jobs created under the NSP	page 56
2.8. The Citizens' Charter – a continuation of the National Solidarity Programme and other National Priority Programmes?.....	page 57
2.9. Conclusion	page 57
3. Development on the ground in Afghanistan	page 59
3.1. Application of the human rights-based approach under the National Solidarity Programme in Afghanistan.....	page 59
3.1.1. Communities see the National Solidarity Programme realising rights.....	page 60
3.1.2. Participation	page 63
3.1.2.1. Participation of persons with disability	page 68
3.1.3. Empowerment	page 68
3.1.4. Non-discrimination.....	page 71
3.1.5. Transparency and Accountability	page 72
3.2. Conclusion	page 74
4. The National Solidarity Programme: Is it implementing a human rights-based approach?	page 77
4.1 Challenges facing the implementation of the National Solidarity Programme	page 77
4.1.1. Insecurity	page 77
4.1.2. Elite Capture	page 80
4.1.3. Cultural traditions	page 82
4.1.4. Politicisation of development funding	page 83
4.1.5. Coordination among donors and with government	page 85
4.1.6. Financial sustainability of the National Solidarity Programme	page 86

4.1.7. Sustainability of Community Development Councils.....	page 87
4.2 Application of the human rights-based approach in the National Solidarity Programme	page 89
4.2.1 Does the NSP realise rights?	page 89
4.2.2 Do participation levels meet HRBA standards?	page 90
4.2.3 Does the National Solidarity Programme empower the Community Development Councils.....	page 92
4.2.3.1. The <i>Arbabs</i> and traditional leaders on the way of community empowerment	page 94
4.2.3.2. Female Empowerment	page 95
4.2.4 Does the National Solidarity Programme adhere to the principle of non-discrimination?	page 95
4.2.5 Does the National Solidarity Programme promote transparency and accountability?	page 97
4.3 Is the Citizens' Charter embracing a fully-fledged human-rights-based approach?.....	page 99
4.4 Conclusion	page 101
5. Conclusion	page 106
5.1. Major findings	page 108
5.2. Recommendations.....	page 110
5.2.1 Recommendation for the design and implementation of the Citizens' Charter.....	page 110
5.2.2 Recommendation on the future role of the Community Development Councils under the Citizens' Charter.....	page 110
5.2.3 Recommendations to donors	page 111
5.3. Conclusions	page 111
6. References	page 113
6.1. Treaties	page 113
6.2. Parliamentary and government materials	page 113
6.3. United Nations General Assembly Resolutions	page 113
6.4. Books and chapters	page 114
6.5. Journal Articles	page 115
6.6. Reports	page 118
6.7. United Nations Documents and Reports	page 120
6.8. Internet sources	page 123
6.9. Newspapers	page 128

7. List of Annexes	page 130
7.1. Annex One - Human Ethics Committee Approvals	page 130
7.2. Annex Two - List of base questions	page 132
7.3. Annex Three - List of interviewees from the field work	page 133
7.4. Annex Four – Map showing the scope of field work	page 134
7.5. Annex Five - List of human rights treaties Afghanistan has ratified	page 135

List of acronyms

ANDS	Afghanistan National Development Strategy
ARTF	Afghanistan Reconstruction Trust Fund
AUSAID	Australian Agency for International Development
CDC	Community Development Council
CDP	Community Development Plan
CPM	Community Participatory Monitoring
CPR	Civil and Political Rights
DFID	Department for International Development
ED	Executive Director
ESCR	Economic, Social and Cultural Rights
FGD	Focus Group Discussions
FP	Facilitating Partner
GDP	Gross Domestic Product
GPS	Global Positioning System
HRBA	Human rights-based approach
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
MDGs	Millennium Development Goals
MRRD	Ministry of Rural Rehabilitation and Development
NBA	Needs-based approach
NGO	Non-Governmental Organisation
NPP	National Priority Programme
NSP	National Solidarity Programme
OECD	Organisation for Economic Co-operation and Development

OHCHR	Office of the United Nations High Commissioner for Human Rights
PRT	Provincial Reconstruction Team
R2D	Right to Development
SIDA	Swedish International Development Cooperation Agency
SIGAR	Special Inspector General for Afghanistan Reconstruction
UN	United Nations
UNCU	United Nations Common Understanding
UNGA	United Nations General Assembly
UNDP	United Nations Development Programme
UDHR	Universal Declaration of Human Rights
UNOCHA	United Nations Office for the Coordination of Humanitarian Assistance

Abstract

Afghanistan is a conservative country with deeply entrenched traditional values. It is also a country facing numerous challenges. In the 1990s, Afghanistan suffered from a disastrous civil war. Before that, it was the site of a proxy war between the West and the Soviet Union, resulting in the invasion of Afghanistan. As a result of numerous and ongoing conflicts, its citizens hardly have had access to health facilities, education, clean drinking water, food, shelter and employment in order to lead a dignified life. Things have begun to improve, nonetheless. Since 2001, the international community has poured a large amount of development funding into Afghanistan. One programme that has received significant international assistance is the National Solidarity Programme (NSP) which provides basic rights to 85 percent of communities in rural Afghanistan.

This thesis considers the human rights-based approach (HRBA) to development, with a focus on the NSP. In particular, this thesis asks whether implementation of the NSP is consistent with the five core principles of HRBA. These principles are: recognition of rights, participation, empowerment, non-discrimination, and accountability and transparency. The thesis considers whether, and to what extent, the Afghan government has been able to embrace the HRBA while implementing the NSP. I attempt to answer this question by drawing on the relevant literature on the NSP and interviewing different individuals who have been involved with the design and implementation of the Programme.

While the field work indicates that the extent of application of each principle of the HRBA varies, the study concludes that the NSP observes the hallmarks of the HRBA bar the recognition of rights as a legal obligation, and the extent of participation from women and persons with disabilities. These, the study argues, are largely related to the challenges of implementing a human rights-based approach to development in a post-conflict country like Afghanistan with a deeply conservative society.

Introduction

Background

On the ground, access to education, health facilities, water, food, shelter and employment is usually taken for granted in affluent countries. In developing countries, the story is the total opposite where access to basic rights is a constant daily struggle. Guaranteeing basic rights is a distant reality and an idea only on paper for millions.

This is the case in Afghanistan – a country that has also been affected by decades of war and civil strife. Millions of people have not had access to basic rights for many years. While conditions have begun to improve for a large number of Afghans, daily life remains a constant struggle. The improvement is also seen as temporary because funding basic rights is on the shoulders of the international community. There are no credible indications the Afghan government will be able to take some financial responsibilities to fund such rights.

Purpose of the research

The purpose of the research is to consider whether the flagship National Solidarity Programme (NSP) in Afghanistan observes a human rights-based approach to development. The thesis aims to achieve the following:

- a. Explain the currently accepted framework for human rights and development, starting from the United Nations' Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Right to Development, the Millennium Development Goals and the new Sustainable Development Goals.
- b. Set out the generally accepted principles of the human rights-based approach to development.
- c. Capture the human rights framework in Afghanistan, including Afghanistan's incorporation of the relevant Covenants and creation of relevant policies and national programmes.
- d. Assess the application on the ground of the principles of the human rights-based approach to development in the National Solidarity Programme in Afghanistan.

Methodology

At its core, this thesis is a socio-legal study intended to study the human rights-based approach (HRBA) to development in Afghanistan as practiced on the ground under the NSP. More specifically, this thesis studies “the implications of the law”, using interviews¹ and focus groups that have either been affected or have been at the forefront of policy, design, operations, implementation and oversight of the NSP.² Drawing on the insights of these

¹ A list of base questions which formed the basis of the semi structured/unstructured interviews is listed in Annex Two.

² Mike McConville and Wing Hong Chui *Research Method for Law* (1st edition, eBook, 2007).

actors and project participants of the NSP, this thesis aims to see how the law and policies are working on the ground and ascertain their implications for rural communities in Afghanistan.

This thesis uses a combination of sources including desk research and field work. The desk research involved review of documents from the United Nations, the World Bank, literature, journals and international reports to capture the framework for human rights and development. A significant amount of information was also obtained through interviews to ascertain the situation on the ground.

I have been working in Afghanistan since June 2013. This has enabled me to carry out the fieldwork in Afghanistan, from April 2015 to December 2015, in line with approval from the University of Canterbury's Human Ethics Committee.³ The focus of the fieldwork was on three different groups: government staff and advisors of the National Solidarity Programme (NSP); staff working with the Facilitating Partners (FPs) of the NSP; and elected and ordinary members of the Community Development Councils (CDCs). While the NSP staff gave consent to mention their names, the details for FPs' staff and community members remain confidential. Instead, pseudonyms are used for FPs' staff and community members.

The fieldwork was carried out in four provinces, namely Kabul, Badakhshan, Ghor and Samangan. I selected these provinces primarily because it was relatively easy for me to visit them as they constitute Afghanistan's working areas. Secondly, Afghanistan has been implementing the National Solidarity Programme in Badakhshan, Ghor and Samangan while it has been also involved in policy level discussions in Kabul. In addition, I interviewed staff from NGOs and one United Nations Agency, who work across 15 provinces including Badakhshan, Balkh, Bamyan, Farah, Faryab, Ghor, Hirat, Kabul, Kandahar, Kapisa, Nangarhar, Panjshir, Parwan, Samangan and Wardak.⁴ In total, I was able to carry out 20 interviews - 12 in the provinces and eight in Kabul.⁵ Security was a major challenge during my interviews with project participants. As a result, I only managed to personally visit two communities where I conducted two focus group discussions (FGDs). Members of one other CDC visited the Provincial Centre for Badakhshan where I conducted the third FGD. Given the security limitations, the Provincial Programme Manager for the province of Ghor facilitated two FGDs with the CDCs on my behalf. In total, five FGDs were held with community members. The fieldwork resulted in almost 400 minutes of recorded interviews which I have also transcribed. Informed consent was received prior to conducting each interview.

In order to examine the application of the human rights-based approach to development in the National Solidarity Programme, I have used a qualitative method, namely purposive

³ University of Canterbury Human Ethics Committee (*Ref: HEC 2015/17*, 23 March 2015). Annex One. The Amended approval is also available as part of Annex One.

⁴ A map of these provinces is found as Annex Four.

⁵ The full list of interviewees is found as Annex Three.

sampling which “groups participants according to their knowledge and role to a particular research question”.⁶ My sample size is small because my research is concerned with “depth and not breadth”.⁷

While both quantitative and qualitative research methods can adopt an empirical approach,⁸ qualitative method is often of a non-numerical nature.⁹ Observations and factual representations happening on the ground make research empirical.¹⁰ In addition, facts and observations that are relevant to the affected population are considered as data and wherever research involves data that has been observed, it is empirical data.¹¹ Therefore, qualitative research has the ability to provide “complex textual descriptions of how people experience a given issue” because the participants are in the environment which is being studied.¹²

My research involved structured and semi-structured interviews and Focus Group Discussions (FGDs) with key participants. I have used both the interviews and the FGDs to help understand how interviewees perceive the implementation of the National Solidarity Programme (NSP) on the ground in Afghanistan. I used open-ended questions about the core elements of the human rights-based approach (HRBA) and the extent of their application within the NSP. The interviews allowed me to investigate key aspects of the NSP in more depth. I used the FGDs to provide insight into how members of the Community Development Councils (democratic village level councils representing the wider community members) perceive their roles and the projects delivered under the NSP.

Statement of positionality

Since June 2016, I have worked in different capacities in Afghanistan. As a result, I have relied on my own observations and experiences acquired during field trips conducted as part of my work commitments. I have used my understanding of the NSP to put ‘better informed’ lead and supplementary questions to the interviewees.

During the field work, I was the sole person for data collection although in one case due to security limitations, a senior field colleague conducted two focus group discussions on my behalf. Generally speaking, I have been both the data collector and analyser. As such, my knowledge and role in development work in Afghanistan may have influenced data

⁶ Kalpana V Jawale “Methods of Sampling Design in the Legal Research: Advantages and Disadvantages” (2012) 2 (4) International Interdisciplinary Research Journal 183 at 188.

⁷ Alice Donald *A Guide To Evaluating Human Rights-Based Interventions In Health And Social Care, Human Rights and Social Justice* (Research Institute, London Metropolitan University, 2012) <http://www.humanrightsinhealthcare.nhs.uk/> at 28.

⁸ Lee Epstein and Gary King “Empirical Research and the Goals of Legal Scholarship: The Rules of Inference” (2002) 69 (1) University of Chicago Law Review, 1-134 at 1.

⁹ Ian Dobinson & Francis Johns “Qualitative Legal Research” in McConville & Chui (eds) *Research Methods for Law* (Edinburgh University Press, Edinburgh, 2007) at 17.

¹⁰ Epstein and King, above n 8, at 18.

¹¹ At 18.

¹² Natasha Mack “and others” *Qualitative Research Methods: A Data Collector’s Field Guide* (2011) Family Health International <<http://www.fhi360.org/sites/default/files/media/documents/Qualitative%20Research%20Methods%20-%20A%20Data%20Collector's%20Field%20Guide.pdf>> at 1.

collection. In addition, the data collected is from a wide range of individuals which helps minimise and avoid researcher bias. On the other hand, my in-depth understanding and knowledge have provided me with an advantage to discuss in depth the topic from different angles with the interviewees.

Structure

The following structure represents the order of the thesis.

In order to consider whether a human rights-based approach to development is applied in Afghanistan, **Chapter One** sets out the current framework for human rights and development. It starts with the United Nations Charter, Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the wider development framework, including the Declaration on Right to Development, the Millennium Declaration and the latest developments surrounding the transition from the Millennium Development Goals to the Sustainable Development Goals. **Chapter One** concludes by identifying the principles of human rights-based approach (HRBA) which will be used as a basis to assess the application of HRBA in the National Solidarity Programme.

Chapter Two presents the current development context in Afghanistan, including the country's human rights framework. This also covers the relevant policies and national programmes aimed at realising basic rights. The Chapter sets out the programmatic and operational requirements of the National Solidarity Programme, setting the scene for Chapters Three and Four. In addition, Chapter Two also briefly sets out the Citizens Charter which will build on the work of the National Solidarity Programme, and will be a crucial programme for the human rights based approach to development in the future arguably embraces a more consistent human rights-based approach.

Chapter Three draws on data from the field, in particular with key individuals who have been part of design and implementation of the National Solidarity Programme. The Chapter uses data obtained during interviews with community participants who are at the forefront of implementation and helping realising rights for other community members. While the main focus of Chapter Three is to capture how the NSP is implemented on the ground, the Chapter also considers the perspectives of the interviewees against the five principles of human rights-based approach in an effort to find out the extent of application of human rights-based approach in the NSP.

Chapter Four synthesises the field work with the literature both in Afghanistan and other similar contexts to squarely address the research question, ie is the human rights based approach being used in the NSP? While the NSP has made important strides in embracing the HRBA, the Chapter discusses a number of challenges which interfere with smooth implementation. They include insecurity, elite capture, politicisation of development aid,

coordination among different stakeholders, financial sustainability of the NSP and sustainability of the Community Development Councils (CDCs). Lastly, Chapter Four asks if each principle of the HRBA is met under the NSP, and if so, to what extent.

Chapter Five presents the findings, recommendations and conclusions on the human rights based approach to development in Afghanistan. The Chapter identifies some of the main obstacles to implementation of the approach while also offering concrete and contextual recommendations on how the Citizens Charter, which will build on the work of National Solidarity Programme from 2017 onwards, can have a fully-fledged human rights based approach in a country with conservative traditions.

Chapter One

Human Rights and Development

The Human Rights-Based Approach to Development

This Chapter captures the framework for human rights and development. In doing so, the Chapter attempts to provide a chronological order of events in relation to human rights and development. In addition, the Chapter investigates the legal basis for economic social and cultural rights in order to determine state's obligations towards realisation of these rights. The Chapter also discusses the core principles of human rights-based approach (HRBA) which will enable me to apply these principles to the programmatic requirements of the National Solidarity Programme (NSP) with a view to find out the application of HRBA in the NSP.

1.1. Human Rights and Development - The Current Framework

Human rights is a contested and controversial concept. While the donor community may have good intentions to realise human rights, projects targeting human rights have generated criticism and even violent protests on the ground. The general public's first impression of human rights has been, albeit mistakenly, Civil and Political Rights (CPR) and not Economic, Social and Cultural Rights (ESCR). Given this limited understanding, human rights have become a polarising concept as people in developing countries often see CPR as a tool and agenda to promote Western values. The tension between the two concepts was often seen through the lenses of the cultural universality and relativity, often resulting in human rights being seen as a fluid concept.¹ Yet, human rights also offers a normative framework which puts people at the centre of the analysis, linking states as duty bearers and citizens as rights holders.²

Equally, development is an elusive concept for many despite all its attractions and promises. The interface between human rights and development has been minimal until recently as the development enterprise operated independently, even in isolation from human rights³ and was perceived as “an instrument of solidarity.”⁴

While there are still gaps in understanding the interrelatedness of the two concepts, both human rights and development are “parallel streams”, addressing not only similar values and

¹ Florian F Hoffmann “Shooting Into The Dark - Toward A Pragmatic Theory Of Human Rights’ Activism” (2006) 41 Texas International Law Journal 403 at 407.

² The Organisation for Economic Co-Operation and Development (OECD) *Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges* (2nd edition, World Bank Publications, Washington DC, 2013) at 69.

³ Peter Uvin “From the right to development to the rights-based approach: how ‘human rights’ entered development” (2007) 17 Development in Practice at 597.

⁴ Hans Otto Sans “Development and Human Rights: the necessary but partial integration of Human Rights and Development” (2000) Human Rights Quarterly 734 -752 at 736.

similar issues,⁵ but also complementing and reinforcing each other as both concepts target human beings.⁶ Yet, inequalities and extensive poverty continue to pose serious concerns and the relationship between human rights and development has never been more striking than today. When working with communities, the relationship between the two is un-divorceable and inseparable as without development, communities will not enjoy their human rights and a dignified life. Major documents have stressed the relationship and complementarity between development, peace, security and ESCR including the United Nations (UN) Charter,⁷ which is based on four key cornerstones, namely peace, development, human rights and international law.⁸

1.2. United Nations Charter

Human rights, whether political, civil, economic, social or cultural rights, are captured in a legal framework, comprising conventions, declarations and other international documents. The UN Charter provides the initial starting point and a normative umbrella for human rights and development. When the UN Charter came into existence, there were three interrelated and interconnected concepts, namely human rights, development and peace that constituted the rationale for “we the people of the United Nations coming together”.⁹ While the three depended on each other, it was later increasingly clear that development became a key condition for the realisation of both human rights and peace.¹⁰

The Charter’s preamble expresses the UN’s determination “to promote social progress and better standards”.¹¹ The Charter entails key provisions supporting the relationship between human rights and development. Article 55 requires the UN, amongst other things, to nationally promote a higher standard of living and conditions of economic and social progress and development.¹² Article 56 requires all members to pledge to take joint and separate action in cooperation with the organisation for the achievement of the purposes set forth in article 55.¹³

Three UN documents constitute the contemporary and definitive statement of human rights.¹⁴ These are the Universal Declaration of Human Rights (UDHR), the International

⁵ Mary Robinson (2005) as cited in David D’Hollander, Axel Marx, and Jan Wouters *Integrating Human Rights into Development Cooperation: A comparative assessment of strategies and practices of donors* Leuven Centre for Global Governance Studies (Working Paper No. 108 – June 2013) at 6.

⁶ Sans, above n 4, at 735.

⁷ Clarence J Dias “The Rights Way to Development: Challenges and Opportunities” (2007) 34 Development Bulletin at 25.

⁸ Clarence J Dias and Scott Leckie, Human Rights Council of Australia the Rights Way to Development: Challenges and Opportunities, Symposium Papers - A Human Rights Approach to Development (1997) <
http://hdr.undp.org/sites/default/files/clarence_j_dias_scott_leckie.pdf> at 3.

⁹ Dias, above n 7, at 25.

¹⁰ At 25.

¹¹ United Nations Charter, the Preamble.

¹² United Nations Charter, art 55.

¹³ United Nations Charter, art 56.

¹⁴ Adam McBeth, Justine Nolan and Simon Rice *The International Law of Human Rights* (Melbourne, Oxford University Press, 2011) at 3.

Covenant on Civil and Political Rights (ICCPR),¹⁵ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁶ They are also referred to as the 'International Bill of Rights' and in addition to other documents, state the rights, freedoms and responsibilities which together comprise the framework for human rights law.¹⁷

In 1948, the United Nations General Assembly (UNGA) adopted the UDHR. The UDHR sets out an internationally recognised set of standards which apply to all persons without any qualification, transcending national, cultural, religious and ideological considerations.¹⁸ Since this momentous decision by the UNGA, the UDHR has served as a cornerstone to promote and protect human rights. Nonetheless, one question that subsequently became a contentious issue was the overall understanding of human rights. In other words, why ESCR were seen as secondary rights compared to CPR?

While there may have been some contention and disagreement as to the categorisation of the rights or controversy around the phrase human rights, "certain non-derogable human rights cannot be suspended" which are "rights to life, physical security, due process and discrimination on the basis of race".¹⁹ One reason for such non derogation is that violation of these rights is regarded "particularly evil"²⁰ and all other rights depend on them. If human rights such as right to life, physical security and other civil rights are violated, it arguably makes other rights meaningless.²¹

While the debate about categorisation still permeates human rights discourse today, all human rights are ostensibly equal.²² Moreover, human rights are "interdependent and indivisible" as the principle of indivisibility acknowledges that no one human right is inherently superior or inferior to any other.²³ This interrelatedness captures well the idea that if one and not the other set of rights is provided, it may not make a real difference. Thus, the concept of indivisibility recognises the nonexistence of hierarchy which is consistent with the concept that human rights are to be treated "fairly, in an equal manner and with the same emphasis".²⁴

¹⁵ International Covenant on Civil and Political Rights, Mar 23 1976, 999 UN TS 171 [hereinafter ICCPR]; see also GA Res. 2200, UN GAOR, 21st Sess (1966).

¹⁶ International Covenant on Civil and Political Rights (ICESCR) Mar 23, 1976, 999 UNTS 171 [hereinafter ICESCR]; see also GA- Res A/6316 (1966).

¹⁷ At 3.

¹⁸ Australian Development Studies Network, Development Bulletin (1995) Editors' Note at 3.

¹⁹ ICCPR (1966) art 6 on life, art 7 on torture or cruel, inhuman or degrading treatment or punishment, art 8 on slavery, art 18, freedom of thought and religion; Tom Farer "The Hierarchy of Human Rights" (1992) 8 American University International Law Review 115-119 at 115.

²⁰ At 115.

²¹ Farer, above n 19, at 116; Walter J Landry "The Ideals and Potential of the American Convention on Human Rights" (1975) 4 Human Rights 395 at 410.

²² The Office of the United Nations High Commissioner for Human Rights (OHCHR) Frequently Asked Questions

On A Human Rights-Based Approach to Development Cooperation (2006) <www.ohchr.org/Documents/Publications/FAQen.pdf> at 2 and 7.

²³ At 2.

²⁴ Vienna Declaration and Programme of Action: Report of the World Conference on Human Rights, Vienna (1993) UN Doc A/CONF 157/23 (1993).

The UDHR itself asserted universality for all human rights, and did not make a distinction between CPR and ESCR. The UDHR was not a legally binding document and, therefore,²⁵ the ICCPR and ICESCR were adopted to translate the rights in the UDHR into specific treaty obligations.²⁶ Given the ideological differences between the West and Soviet blocs, establishing two covenants was an effective way, at the time, to actively engage both power blocs in the UN human rights regime.²⁷ As a result, the two classifications of rights became part of the human rights discourse.²⁸

The reality on the ground has remained different as greater emphasis has been awarded to CPR at the cost of ESCR.²⁹ For instance, we frequently hear how violators of CPR are condemned, if not punished, but little is heard about the millions who continue not to have access to food, water, education, hospitals and jobs – all essential for a dignified life. Although the two Covenants are key milestones, this paper focuses on ESCR because the ICESCR has provided important groundwork for the human rights-based approach (HRBA) in development discourse. Nonetheless, for ease and flow of discussion, I briefly refer to the debate between CPR and ESCR where arguably ESCR had a second class status, before focusing on ESCR.

1.3. Civil and Political Rights *vis-à-vis* Economic, Social and Cultural Rights

The categorisation of rights reflected the political climate of the time, influenced strongly by Cold War politics.³⁰ In light of the ideological differences between the Warsaw and NATO blocs, the Western countries advocated for CPR, with an emphasis on freedom and democracy. The West, in contrast, saw ESCR as a “socialist manifesto”.³¹

CPR are mainly derived from the 17th and 18th century reformist theories which are largely associated with the French, American and English revolutions.³² These rights are known as “negative rights”³³ or “first generation rights”³⁴ because they were seen as “demanding freedom” from the State. At the time, they were also seen as “justiciable and readily enforceable”.³⁵ While the Western bloc supported CPR, the Communist bloc challenged CPR, arguing CPR did not assure “substantive commitment to material equality”.³⁶

²⁵ Philip Harvey “Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously” (2001-2003) 33 Columbia Human Rights Law Review 363-471 at 377.

²⁶ At 377.

²⁷ Jim Ife *Human Rights from Below, Achieving rights through community development* (Cambridge University Press, Cambridge, 2009) at 113.

²⁸ At 113.

²⁹ Manisuli Ssenyonjo *Economic, Social and Cultural Rights in International Law* (Hart Publishing, Portland, 2009) at 4.

³⁰ Ife, above n 27, at 113.

³¹ Paula Dobriansky *U.S. Human Rights Policy: An Overview*, U.S. Dep’t Of State, *Current Pol’y* No 1091, at 2-3 (1988); Barbara Stark, “Economic Rights in the United States and International Human Rights Law ; towards an entirely new strategy” (1992-1993) 44 Hastings Law Journal 79 at 81.

³² Ssenyonjo, above n 29, at 10.

³³ At 9.

³⁴ Rebecca Wallace *International Law* (5th edition, Sweet & Maxwell, London, 2005) at 225, ac cited in Ssenyonjo above n 29, at 9.

³⁵ Ssenyonjo, above n 29, at 10.

³⁶ Dianne Otto “Rethinking The ‘Universality’ Of Human Rights Law” (1997) 29 Columbia Human Rights Law Review 1 at 5.

Advocates of CPR claimed that individuals cannot live without CPR such as freedom from arbitrary deprivation of life, the right to life, freedom of speech, assembly and movement.³⁷ The proponents of CPR further claimed that “poor people [sic] themselves choose CPR over ESCR by relinquishing basic needs to pursue a cause.”³⁸ Proponents of CPR have made a “politically charged claim” that ESCR flow from an environment where we have CPR and, therefore, it is only normal to prioritise CPR over ESCR.³⁹

Initially, the position of the United States, which was leading the Western bloc, was hopeful on ESCR. President Roosevelt had argued in his State of the Union address that true individual freedom could not exist without economic security and independence.⁴⁰ He went on to claim that “people who are hungry and out of jobs, are the stuff of which dictatorships are made”.⁴¹ In his now famous speech of “the four freedoms”, President Roosevelt talked about the freedom from want - a life with the basic needs met.⁴²

Despite not having ratified the ICESCR, the US position has, nonetheless, incrementally relaxed over the last two to three decades. The US has gradually accepted and recognised ESCR. For instance, in the Vienna Declaration, the US recognised the promotion of ESCR and CPR of paramount importance for human dignity and for legitimate aspirations of human beings.⁴³ The relaxation of the position can be seen in numerous statements but in principle, the US has also emphasised two points. First, “development can be set as goals and not guarantees”⁴⁴ and secondly, democratic institutions should promote both CPR and ESCR.⁴⁵

On the other hand, the Communist bloc was advocating for ESCR and equal rights for all. ESCR are rights such as the right to education, health, water, shelter and employment.⁴⁶ These are core rights which are necessary for a dignified life to meet basic human needs.⁴⁷ These rights are known as “second generation rights”⁴⁸ or “positive rights”⁴⁹ which demand

³⁷ Landry, above n 21, as cited in Dorothea Anthony *‘Indivisibility of Human Rights: A Theoretical Critique’* (2010) <<https://www.uts.edu.au/sites/default/files/law-form-dorothea-anthony.pdf>> at 27.

³⁸ Penny Overby “The Right to Food” (1990) 54 *Saskatchewan Law Review* 19, 29, as cited in Anthony above n 50, at 27.

³⁹ M Rodwan Abouharb, and David Cingranelli *Human Rights and Structural Adjustment* (2007) 68, as cited in Anthony above n 37, at 27; Farer, above n 19, at 116; Landry above n 21, at 410.

⁴⁰ 90 CONG REc 55-57 (1944) as cited in Padideh Ala’i, *A Human Rights Critique of the WTO: Some Preliminary Observations* (2001) 33 *George Washington International Law Review* 537 at 545.

⁴¹ At 545.

⁴² The Office of the United Nations High Commissioner for Human Rights (OHCHR) *Frequently Asked Questions on Economic, Social and Cultural Rights*, Fact Sheet No 33 (2008) <www.refworld.org/docid/499176e62.html> at 8.

⁴³ Conference on Security and Co-Operation in Europe: Concluding Document from the Vienna Meeting, Nov 4, 1986 -Jan 17, 1989, 28 ILM. 527, 534 114 (1989) as cited in Ala’i, above n 40, at 548.

⁴⁴ Comments submitted by the United States of America, *Report of the Open Ended Working Group on the Right to Development*, UN ESCOR, Commission on Human Rights, 57th Session UN Doc E/CN.4/2001/26 (2001) at [8].

⁴⁵ Ala’i, above n 40, at 549.

⁴⁶ These five basic rights have been captured in articles 13, 12, 11, 9, 6 and 15 of the ICESCR.

⁴⁷ Amnesty International, *Economic, Social And Cultural Rights: Questions and Answers* (1998) Adapted from Human Rights Education: The Fourth R, 9:1. For more details, please see <<http://www.pdhre.org/>>.

⁴⁸ Wallace, above n 34, at 225.

⁴⁹ Ssenyonjo, above n 29, at 10.

state intervention to provide basic rights such as education, health, infrastructure and social security, among others.

Opponents of ESCR have termed provision of ESCR as “state interventionism” and where a state attempts to provide ESCR, it would be seen as infringing upon individual liberty.⁵⁰ On the other hand, proponents of the ESCR have argued that the provision of these rights are key for the fulfillment of the basic needs of individuals. Its proponents have advanced a number of arguments, including the “full belly” theory, stating that prioritising CPR is like “throwing a rope of sand to a drowning man”.⁵¹ Proponents of ESCR also contend that lack of provision of ESCR not only contributes to but also strengthens the existing inequalities, especially vis-à-vis women - a situation that “many rights advocate have no answer for and will not be resolved overnight”.⁵²

1.4. Are human rights really universal?

While the adoption of the UDHR purported to give human rights universality,⁵³ there have always been ideological differences on the validity and applicability of human rights both inside and outside the West.⁵⁴ Increasingly, it was clear that the UN Charter and the UDHR were based on Western political ideologies which provided a Western notion of human rights, perceivably applicable to non-Westerners.⁵⁵ Such a difference of opinion dates back to the original interpretation of human rights from a liberal understanding which interpreted human rights as CPR.⁵⁶ At the time of the formulation of the UDHR, there were concerns that “ideas about rights and wrongs and good and evil that exist in one society are incompatible with the ideas of rights and wrongs and good and evil in many other societies”.⁵⁷ At the time of voting, for instance, Saudi Arabia abstained from the vote on the UDHR on the grounds that the UDHR was inconsistent with Islamic law and that it did not factor into the cultural and religious context of non-Western countries.⁵⁸ In addition, some also asked if a right must be “feasible at all times, or in every country” for it to be binding.⁵⁹

⁵⁰ Frank B Cross “The Error of Positive Rights” (2001) 48 UCLA Law Review at 857 as cited in Anthony above n 50, at 27.

⁵¹ Kader Asmal “Designing a Bill of Rights for a Diverse Society” (2007) 6 European Human Rights Law Review 597 at 605, as cited in Anthony above n 37, at 27.

⁵² OHCHR, above n 42, at 5.

⁵³ Jack Donnelly “The Relative Universality of Human Rights” (2007) 29 Human Rights Quarterly 281 at 289.

⁵⁴ Adamantia Pollis & Peter Schwab *Human Rights: Cultural And Ideological Perspectives* (New York, Praeger Publishers, 1979) at 1; Michael Goodhart “Origins and Universality in the Human Rights Debates: Cultural Essentialism and the Challenge of Globalisation” (2003) 25 Human Rights Quarterly 935–964 at 938.

⁵⁵ Pollis and Schwab, above n 54, at 1.

⁵⁶ Goodhart above n 54, at 938.

⁵⁷ The Executive Board: American Anthropological Association “Statement on Human Rights” (1947) 49 American Anthropological 539 at 542.

⁵⁸ Dianne Otto “Everything is Dangerous: Some Post Structural Tools for Rethinking the Universal Knowledge Claims of Human Rights Law” (1999) 5 Australian Journal of Human Rights at 1; Jonathan Russell, The London School of Economics, *Human Rights: The Universal Declaration vs The Cairo Declaration*, <blogs.lse.ac.uk/mec/2012/12/10/1569>.

⁵⁹ Adam Etinson *Human Rights: Moral or Political? A Proposal for Oxford University Press* (2002) at 3.

Proponents of universality, on the other hand, have claimed that “all societies cross-culturally and historically manifest conceptions of human rights”,⁶⁰ that all societies have human rights and use the same vocabulary⁶¹ and that “human rights are not a Western ideology”.⁶² The first person credited with developing a comprehensive theory of human rights was John Locke who stated that “people form societies, and societies establish governments to promise the enjoyment of “natural rights”.⁶³ Locke defined government as a social contract between rulers and the ruled where people swear allegiance to the government which should protect their human rights.⁶⁴ Locke also argued that “natural or human rights are possessed by all persons” by virtue of being rational persons.⁶⁵ Thus, Universalists contend that rights envisaged under the UDHR and the two Covenants are universally valid.⁶⁶ They have also argued that universality is an essential and distinctive aspect of human rights and, by definition, human rights apply to all human beings, without any distinction, and are, therefore, universal.⁶⁷

On the other hand, from a relativist perspective, human rights is arguably a concept of modern Western civilisation,⁶⁸ where “individual wellbeing is prioritised over the greater good of the community”.⁶⁹ As such, it is not necessarily congruent with non-Western values and culture.⁷⁰ Relativists have also questioned the validity of human rights for all cultures, arguing that if human rights are Western, they cannot also be universal.⁷¹ Similarly, the universality of human rights is questioned on the account of autonomy, noting not all rights are universally applied.⁷² Of course, human rights are but one type of rights, namely the rights one holds by virtue of being a person. Thus, not all rights held by human beings are human rights or universal. Legal, contractual, promissory, and constitutional rights are held by human beings without their being necessarily human rights.⁷³

⁶⁰ Pollis and Schwab above n 54, at 15.

⁶¹ Pollis and Schwab, at xiv; Hoffmann, above n 1, at 14.

⁶² Raul Manglapus, cited in Donnelly “Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights” *The American Political Science Review* (1982) 76 (2) 303 at 303.

⁶³ John Locke *The Second Treatise of Government in Two Treatises of Government* (P Laslett ed, Cambridge, Cambridge University Press, 1988) as cited in Alasdair Cochrane, *In Defence of Traditional Theories of Human Rights*, *Centre for Political Theory and Global Justice*, Working Paper Series (2013) <https://www.sheffield.ac.uk/polopoly_fs/1.277288!/file/CochraneInDefenceofTraditionalTheoriesofHumanRights.pdf> at 3; Human Rights in Brief, Bureau Of International Information Programs U.S. Department Of State <http://seoul.usembassy.gov/uploads/1w/3K/1w3KgCdDpwKHNdHX_ARmA/Human-Rights-in-Brief.pdf> at 3.

⁶⁴ At 4.

⁶⁵ Cochrane, above n 63, at 3.

⁶⁶ Goodhart, above n 54, at 940; Etinson, above n 59, at 1.

⁶⁷ Peter Kirchschlaeger “Universality of Human Rights” (2010) at 1; Abdulla Hi Ah Med An-Na’Im Values, “Transcending Imperialism: Human Values and Global Citizenship, Self-Determination, and Citizenship” *The Tanner Lectures on Human Values* University of California, Berkeley (2010) at 86.

⁶⁸ Jack Donnelly “Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights” (1982) 76 (2) *The American Political Science Review* 303 at 303.

⁶⁹ Jack Donnelly “Human Rights and Asian Values: A Defense of “Western” Universalism” Joanne R. Bauer & Daniel A. Bell (eds) *The East Asian Challenge For Human Rights* (Cambridge: Cambridge University Press, 1999) at 78-79.

⁷⁰ Pollis and Schwab, above n 54, at 1.

⁷¹ Goodhart, above n 54, at 941.

⁷² Michael Goodhart “Neither Relative nor Universal: A response to Donnelly” (2008) 30 *Hum Rights Quarterly* 183 at 187.

⁷³ Donnelly, above n 68, at 305.

According to Hans Morgenthau's realist perspective, "universal moral principles cannot be applied in abstract universal formulation" and "must be filtered through the concrete circumstances of time and place".⁷⁴ Relativist thinkers argue, therefore, that there are no absolute or permanent truths for a given culture against which that culture can be judged.⁷⁵ As a result, there is "no universal nature to human rights" in the absence of philosophical foundation for human rights.⁷⁶ Universal values have also been dismissed as "mere pretense" in international politics for the pursuit of national policies.⁷⁷ As such, human rights should be understood in view of their function in contemporary international politics.⁷⁸ Rorty has tried to unite the position between Relativists and Universalists by arguing that while the Western culture may be superior to other cultures, the superiority does not mean these values should have universal application.⁷⁹ Rorty contends that a shared human attribute is rationality, a term that may be ambiguous, in itself.⁸⁰ Perhaps, the question that could be asked is 'what all human beings have in common'.⁸¹ The response could be simple that we are all like each other.⁸²

Despite the ongoing debates between Universalists and Relativists, the fact remains that the core international human rights treaties have now been widely ratified. For example, ICCPR has 168 ratifications and ICESCR has 164 ratifications.⁸³ States have, therefore, committed themselves to universal standards although, as noted by Abdullahi An-Na'im, the key issue in today's world is how to translate those universal standards into meaningful local contexts.⁸⁴ Abdullahi An-Na'im has argued that universal values cannot exist in abstract terms. For such values to exist, they have to be constructed through debate and action on the ground.⁸⁵

1.5. The concept of progressive realisation and states' obligations

States' responsiveness vis-à-vis ESCR may differ from state to state, depending on the state's resources. The ICESCR requires states "to take steps to the maximum of their available resources to achieve progressively the full realisation of ESCR".⁸⁶ The reference to "resource

⁷⁴ Hans J Morgenthau *Politics among Nations: The Struggle for Power and Peace* (5th ed, New York, Alfred A Knopf, 1973) at 87.

⁷⁵ Bhikhu Parekh Non-Ethnocentric Universalism, in *Human Rights in Global Politics* 128 (Cambridge University Press, Tim Dunne & Nicholas J Wheeler eds, 1999) as cited in Goodhart, above n 54 at 939.

⁷⁶ Richard Rorty *Human rights, rationality, and sentimentality* in *human rights: The Oxford Amnesty Lectures*, eds Stephen Shute and Susan Hurley (New York, Basic Books, 1993), at 117; Hoffmann, above n 1 at 404.

⁷⁷ Hans J Morgenthau *In Defense of the National Interest* (New York, Alfred A Knopf, 1951) at 35.

⁷⁸ Etinson, above n 72, at 1.

⁷⁹ Rorty, above n 76, at 116.

⁸⁰ Margaret Gilbert *Rorty and Human Rights* (2010) <<http://escholarship.org/>> at 6.

⁸¹ At 8.

⁸² At 8.

⁸³ The Office of the United Nations High Commissioner for Human Rights (2016) Status of Ratifications, for more information please refer to <http://indicators.ohchr.org/>; German Institute for Human Rights, *How many states have ratified human rights treaties?* <www.institut-fuer-menschenrechte.de/en/topics/development/frequently-asked-questions/4-how-many-states-have-ratified-human-rights-treaties/>.

⁸⁴ An-Na'im, above n 67, at 125.

⁸⁵ At 115.

⁸⁶ ICESCR, art 2 (1).

availability” recognises the fact that realising these rights can be challenged by lack of funds and resources.⁸⁷

The concept of ‘progressive realisation’ in the Covenant has been often mistakenly understood to imply that ESCR can wait until a country develops economically and has sufficient resources.⁸⁸ This, in fact, was neither the intention nor the aim behind this provision. The Committee on Economic, Social and Cultural rights requires states to move quickly to realise the ESCR.⁸⁹ The Committee also requires states to use resources effectively, equitably and immediately.⁹⁰ The concept, however, does not mean states should wait until it has all the resources to provide ESCR to all. Rather, states should progressively and incrementally address the realisation of ESCR to the most marginalised and vulnerable groups.

Under the concept of progressive realisation, there are obligations of result and obligations of conduct. The obligation of conduct requires a state to undertake specific steps, either active or passive.⁹¹ This means enacting laws or putting policies in place. The obligation of result, on the other hand, mandates states to ensure rights are realised and the desired results are produced.⁹² In other words, states are expected to design, finance and implement programmes to “provide immediately the core minimum level of rights” to the most marginalised persons.⁹³

While both the obligations of result and conduct provide “an effective tool for monitoring and evaluating of the implementation” of the ESCR,⁹⁴ the division may not be as clear cut and the distinction between the two may be blurred.⁹⁵ At times, even these obligations may overlap and it may be impossible to differentiate between the two.⁹⁶ Having said this, the ICESCR enshrines in article 2(1) a progressive realisation of the ESCR, which has been interpreted that “the Covenant imposes an obligation of result”.⁹⁷ Steps towards achieving ESCR are expected to be taken within a reasonably short time⁹⁸ and where a state fails to take steps, this could amount to a violation of the Covenant.⁹⁹

⁸⁷ Ssenyonjo, above n 29, at 10; ICESCR, art 2 (1).

⁸⁸ The Office of the United Nations High Commissioner for Human Rights (OHCHR) Economic, Social and Cultural Rights, Handbook for National Human Rights Institutions, Professional Training Series Number 12 (2006, New York) <<http://www.ohchr.org/Documents/Publications/training12en.pdf>> at 10.

⁸⁹ General Comment No 3 of the Committee on Economic, Social and Cultural Rights on the nature of States parties' obligations at [9] as cited in OHCHR), above n 88, at 10.

⁹⁰ At 10.

⁹¹ University of Minnesota, Human Rights Centre, *Circle of Rights, Economic Social and Cultural Rights Activism: A Training Resource* <<http://www1.umn.edu/humanrts/edumat/IHRIP/circle/toc.htm>>; Magdalena Sepúlveda Carmona *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003, Hart/Intersentia, Antwerp) at 185.

⁹² OHCHR, above n 88, at 61; Sepúlveda Carmona, above n 91, at 185.

⁹³ OHCHR, above n 88, at 61.

⁹⁴ University of Minnesota, above n 91.

⁹⁵ Sepúlveda Carmona, above n 91, at 191.

⁹⁶ At 192.

⁹⁷ At 191.

⁹⁸ OHCHR, above n 88 at 10.

⁹⁹ At 10.

However, disagreement continues as to whether states are legally bound to financially provide for the ESCR. Neither the drafting history nor state practice can provide a definitive answer.¹⁰⁰ Although there was consensus that international cooperation and assistance was important for the realisation of ESCR, there was disagreement on the notion and scope of extraterritorial obligations.¹⁰¹ There is also no case law on the ESCR while the ICESCR also lacks provisions governing territorial scope.¹⁰² That is why the drafters avoided the usage of the word “guarantee” and instead used “take steps for”¹⁰³ because such a commitment would be seen as too onerous.¹⁰⁴

During the negotiations for the Optional Protocol, some industrialised countries accepted moral responsibility but also argued that the ICESCR does not “impose legally binding obligations” when it comes to ESCR.¹⁰⁵ This is understandable because such a duty implies that rich states have an obligation to address ESCR in poorer countries.¹⁰⁶ In the case of Afghanistan, as will be discussed in more detail in Chapters Two and Four, the whole of the development budget including financing the National Solidarity Programme (NSP) is on the shoulders of the rich nations.

While the disagreements may be on the scope of the duty, there is broad consensus that the ICESCR imposes some extraterritorial obligations towards ESCR.¹⁰⁷ Similarly, the UNGA does illustrate that the right to food requires national and international cooperation to fulfill such a right for all.¹⁰⁸ The Millennium Development Goals (MDGs), which is strong expression of support from the international community, strengthen the political commitment to institutionalise responsibility towards realising and financing of ESCR.¹⁰⁹

¹⁰⁰ Olivier De Schutter and others “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights” (2012) 34 Human Rights Quarterly 1084–1169 at 1090.

¹⁰¹ Fons Coomans “The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights” (2011) 11(1) Human Rights Law Review at 1; Philip Alston and Gerard Quinn “The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights” (1987) 9 Human Rights Quarterly 156 at 166; Daniel Moeckli and others, *International Human Rights Law*, (2nd ed, Oxford University Press, Oxford, 2014) at 134.

¹⁰² Moeckli, above n 101, at 134.

¹⁰³ Alston & Quinn, above n 101, at 166.

¹⁰⁴ 8 UN ESCOR C4 (272d mtg) at 10, UN Doc E/CN.4/SR.272 (1952) (Mr Nisot, Belgium), as cited in Alston & Quinn, above n 101, at 166.

¹⁰⁵ Report of the Open-ended Working Group to Consider Options Regarding the Elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on Its Third Session, UN ESCOR, Comm’n on Hum Rts 62d Sess, 78, 82 UN Doc E/CN.4/2006/47 (2006) as cited in De Schutter and others, above n 100, at 1094.

¹⁰⁶ Moeckli, above n 101, at 134.

¹⁰⁷ De Schutter and others, above n 100, at 1094.

¹⁰⁸ The Right to Food, GA Res 59/202, UN GAOR, 59th Session 32 20 UN Doc A/RES/59/202 (2005) as cited in De Schutter and others, above n 100, at 1095.

¹⁰⁹ De Schutter “and others”, above n 100, at 1095.

1.6. Resurgence in economic, social and cultural rights?

At the UN level, there is increasing recognition that ESCR are the birthright of every individual,¹¹⁰ necessary for development of human beings. This increased recognition has only been witnessed since the 1990s¹¹¹ as more studies also indicate that ESCR have already brought substantial benefits to poor people and are “likely to continue enriching the lives of millions”.¹¹² There is also increasing consensus that lack of provision of such rights continues to have dire consequences on our freedoms and capabilities. Senior UN officials have admitted that poverty and exclusion have contributed to the security threats we face today across borders, which in turn undermine promoting and protecting human rights.¹¹³ Therefore, it is only timely to ensure the increased recognition is translated into meaningful local contexts.¹¹⁴

A number of national constitutions including those of Finland, Portugal and South Africa explicitly recognise ESCR. In addition, both the French Constitution of the Fifth Republic (1958) and the Swiss Constitution contain provisions on the justiciability of ESCR.¹¹⁵ The Afghan Constitution also makes express reference to economic and social rights by affirming to “accelerate and improve economic, social and cultural matters and foster people’s participation in development”.¹¹⁶ Chapters Three and Four will test the Afghanistan government’s position if the National Solidarity Programme has ensured inclusive participation in development.

1.7. The Declaration on the Right to Development (1986)

In 1986, the UNGA recognised and established development as a right, putting people for the first time at the heart of the development process.¹¹⁷ The Declaration on the Right to Development (R2D) started a more visible resurgence of ESCR, aiming to find a middle ground between the ideological positions of the Western and Communist blocs. Given the widespread poverty and disparities, the R2D provided states with an initiative to address the inequalities between the South and the North, stressing all states to create an environment that is realistic for the realisation of the R2D.¹¹⁸

¹¹⁰ OHCHR, above n 42, at 8.

¹¹¹ Michael Krennerich (2013) Economic, social and cultural rights - from hesitant recognition to extraterritorial applicability <<http://menschenrechte.org/wp-content/uploads/2013/11/Article-by-Michael-Krennerich.pdf>> at 5.

¹¹² Varun and Gauri (2008) at 303 and Darrow 2012 at 93-99 as cited D’Hollander, Marx, and Wouters, above n 5, at 32.

¹¹³ Louise Arbour United Nations High Commissioner for Human Rights (Geneva, 14 January 2005) <http://www.urbancentre.utoronto.ca/pdfs/elibrary/Arbour_Charity-Entitlement_.pdf> at 1.

¹¹⁴ At 1.

¹¹⁵ Christian Stark “Europe’s Fundamental Rights in their Newest Garb” (1982) 3 HRLJ 103 as cited in Michael K Addo “Justiciability of Economic, Social and Cultural Rights” (1988) 14 Commonwealth Law Bulletin 1425 at 1425.

¹¹⁶ Constitution of Afghanistan (2004), art 137.

¹¹⁷ United Nations General Assembly, Declaration on the Right to Development, A/RES/41/128, 4 December 1986, 97th plenary meeting <www.un.org/documents/ga/res/41/a41r128.htm>.

¹¹⁸ Celestine Nyamu-Musembi and Andrea Cornwall “What is the “rights-based approach” all about? Perspectives from international development agencies” (Institute of Development Studies, Working Paper 234, 2004) at 8.

The Declaration proclaimed the right to development as an inalienable right, stating that each person is “entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.”¹¹⁹ The Declaration on the R2D confirmed that all human rights and fundamental freedoms are indivisible and urgent consideration should be given to the implementation, promotion and protection of CPR and ESCR.¹²⁰ The R2D framework has also recognised the inclusive and participatory nature of development by placing special emphasis on meaningful and inclusive participation which requires integrating human rights into development theory to tackle and alleviate poverty.¹²¹ In Chapters Three and Four, I intend to find out if the National Solidarity Programme, the Afghan government’s flagship development programme, has been able to integrate human rights principles in its design.

The R2D has been seen as a key milestone by “third world states” as it aims to introduce a package of reforms intended to have a new economic order which is fairer to less fortunate states.¹²² Although it is a non-binding UNGA resolution, it has emphasised the global dimension and the inequalities between the South and the North, advocating to create a just and equitable international environment for the realisation of the right to development.¹²³ Arguably, the Declaration is a bold attempt to gradually contribute towards equitable development.

Even though the approval of the Declaration on R2D was a major step, the Declaration was not reached by consensus,¹²⁴ illustrating the continued divide among the UN member states. For example, eight industrial countries, including the United Kingdom, Germany and Japan abstained from voting while the United States was the single country voting against the Declaration.¹²⁵ In total, there were 146 votes in support of the Declaration, including Australia, Belgium, Canada, France, Italy, Netherlands, New Zealand and Norway.¹²⁶ Although the Declaration was adopted in a plenary meeting, there are no records of Afghanistan’s position.

The R2D has placed the onus on states to “create conditions favourable to the development of peoples and individuals” as their primary responsibility.¹²⁷ To that effect, the R2D affirmed that states are responsible to formulate appropriate national development strategies and policies. Afghanistan was quick to develop and finalise its National Development

¹¹⁹ At 8.

¹²⁰ At 8.

¹²¹ United Nations *The Right to Development at a glance* <www.un.org/en/events/righttodevelopment/pdf/rtd_at_a_glance.pdf> at 2.

¹²² Nyamu-Musembi and Cornwall, above n 118, at 8.

¹²³ Declaration on the Right to Development, above n 117.

¹²⁴ Felix Kirchmeier *The right to development, where do we stand? ' Dialogue on Globalisation* (Friedrich Ebert Stiftung, Occasional Paper No 2, 2006) at 9.

¹²⁵ Brownlie (1989) as cited in Nyamu-Musembi and Cornwall, above n 118, at 8.

¹²⁶ Brownlie (1989) as cited in Nyamu-Musembi and Cornwall, above n 118, at 8.

¹²⁷ Declaration on Right to Development, above n 117.

Strategy although it has only invoked the language of “right to development” in 2016.¹²⁸ The R2D aims at the constant improvement of the well-being of the entire population, on the basis of their active, free and meaningful participation in development.¹²⁹

While the right to development was already recognised by the 1982 African Charter on Human and People’s Rights, it has, since then, been recognised in many jurisdictions. The Arab League, for example, recognises the right to development as “a fundamental human right” requiring all states to formulate policies and to take measures to guarantee the R2D.¹³⁰ Under the Arab Charter, every citizen has the right to the realisation and enjoyment of these rights.¹³¹ More recently, it has been reaffirmed in the Millennium Declaration as well as the World Summit Outcome Document – both discussed below.

1.8. Vienna Declaration and Programme of Action (1993)

The 1990s saw increased momentum on the right to development as the principle of indivisible, interdependent and non-hierarchical nature of rights became the norm.¹³² The re-energised drive started with the World Conference on Human Rights in Vienna – where the indivisibility of human rights and the right to development were again endorsed unanimously. The Vienna Declaration also represented a major shift as it was endorsed by the US,¹³³ further highlighting the resurgence of the ESCR.

The World Conference on Human Rights in Vienna was a watershed event in the context of ESCR, affirming that “all human rights are universal, indivisible, interdependent and interrelated” and that “the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis”.¹³⁴ As a result, the legal content of internationally recognised ESCR has been clarified,¹³⁵ putting “the universal nature of all human rights and fundamental freedoms beyond question”.¹³⁶ The Conference Report is seen as “the most comprehensive human rights document in the history of the United Nations”, as it allowed ESCR to receive more attention, which had previously been given to the CPR.¹³⁷

The final text which was agreed by 171 states - including Afghanistan and endorsed by the UNGA- reaffirmed the longstanding recognition of interdependence between democracy,

¹²⁸ Islamic Republic of Afghanistan, Ministry of Foreign Affairs, Afghanistan National Development Strategy < <http://mfa.gov.af/>>; Islamic Republic of Afghanistan, Ministry of Rural Rehabilitation and Development, General Procurement Notice (April, 2016) < <http://mrrd.gov.af/en>>.

¹²⁹ Declaration on Right to Development, above n 117.

¹³⁰ Arab Charter on Human Rights, art 37.

¹³¹ Arab Charter on Human Rights, art 37.

¹³² Nyamu-Musembi and Cornwall, above n 118, at 9.

¹³³ Kirchmeier, above n 113, at 14.

¹³⁴ OHCHR 2008, above n 42, at 7.

¹³⁵ At 7.

¹³⁶ Vienna Declaration and Programme of Action (1993) UN Doc A/CONF 157/23 (1993 at [1]; Cees Flinterman “Vienna Declaration and Programme of Action: 20 Years Later” (2013) 31(2) Netherlands Quarterly of Human Rights 129 at 130.

¹³⁷ Flinterman, above n 136, at 130.

development and human rights.¹³⁸ The Vienna Declaration prepared the way for promotion of the right to development¹³⁹ and reaffirmed it as an integral part of fundamental human rights”.¹⁴⁰ While there were concerns that some states still questioned the indivisibility of all human rights at the expense of implementation of ESCR,¹⁴¹ the biggest concern had been how the international community would operationalise the concept of the R2D so communities on the ground can have access to basic rights.

1.9. The Millennium Declaration

In late 2000, the High Level Plenary Meeting on the Millennium Development Goals (MDGs) attracted a majority of world leaders, key actors from the civil society and the private sector.¹⁴² The meeting continued the resurgence of ESCR by generating extraordinary attention and unprecedented agreement from member states on the importance of human rights.¹⁴³ This collective pledge by the international community by way of the MDGs was to operationalise human rights standards in a bid to help the most marginalised and vulnerable populations. Perhaps, it was the first real attempt to translate states’ commitments to meaningful changes on the ground.

The MDGs were designed to address different aspects of poverty, including hunger, disease, access to water and lack of education.¹⁴⁴ The eight goals, which were time bound and measurable, included reduction of poverty and hunger; achieving universal primary education; promotion of gender equality and women empowerment; reduction of child mortality; improve maternal health; combating HIV, malaria and other diseases; ensuring environmental sustainability; and developing global partnerships.¹⁴⁵ These goals were anticipated to be achieved between 2000 and 2015.

The MDGs have been the subject of sharply divided opinions. Some have described them as the most important initiatives in the history of development while others have termed them as “betrayal of human rights and universal values”¹⁴⁶ or representing a donor-led agenda which did not take into account local contexts.¹⁴⁷ Despite the disagreements, there seems to be some consensus that the MDGs have served as a catalyst for governments and major

¹³⁸ Forty Eight Session of the General Assembly Resolution 48/121 (1994).

¹³⁹ Vienna Declaration and Programme of Action, above n 136, at 3.

¹⁴⁰ At 3.

¹⁴¹ Flinterman, above n 136, at 131.

¹⁴² Mac Darrow “The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post-2015 Development Agenda” (2012) 15 (1) Yale Human Rights and Development Journal at 55.

¹⁴³ At 55.

¹⁴⁴ The Office of the United Nations High Commissioner for Human Rights (OHCHR) Claiming the Millennium Development Goals – a human rights-based approach, U.N. Doc. HR/PUB/07/3 (2008) <http://www.ohchr.org/Documents/Publications/Claiming_MDGs_en.pdf> at VII.

¹⁴⁵ United Nations Development Programme (UNDP) Millennium Development Goals < <http://www.undp.org.af/MDGs/MDGstatus07.htm>>.

¹⁴⁶ Malcolm Langford Andy Sumner and Alicia Yamin, *The Millennium Development Goals and Human Rights* (Harvard University, Massachusetts, 2015) at 1.

¹⁴⁷ Andy Sumner *Rethinking Development Policy: Beyond 2015* as cited in Claire Melamed and Lucy Scott “After 2015: progress and challenges for development” (2011) Overseas Development Institute <<http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7061.pdf>> at 2.

donors to increase their expenditure for the poor. As a result, the MDGs have contributed to help almost half a billion people who were previously living on under one dollar a day,¹⁴⁸ and have produced good results by galvanising support across the spectrum among political leaders, civil society, donors, media and even the private sector.¹⁴⁹ While the MDGs have provided a powerful fillip for the realisation of human rights,¹⁵⁰ millions still live under poverty and do not have access to basic rights. In order to address these concerns, the dialogue on the MDGs continued, in an effort to assess and review progress.

1.10. The World Outcome and Millennium Summits

The World Outcome Summit in 2005 and Millennium Summit in 2010 both served as opportunities for comprehensive reviews of the progress of the MDGs. Lack of consistency among states on not having incorporated human rights principles into their development policies was identified as a key area. During the World Summit 2005, the significance of MDGs in national development policies and strategies was highlighted. Some results were encouraging. For instance, states that incorporated human rights into their national policies, they were more likely to achieve the MDGs by the 2015 deadline.¹⁵¹ Therefore, the World Outcome Summit asked all states to develop their national development strategies and integrate human rights principles into them¹⁵² whereas the Millennium Summit re-affirmed the pledge from the international community “not to fail the promises made in the Millennium Declaration for millions to have a better life”.¹⁵³ The Summits were intended to allow world leaders to “review the progress, identify gaps, take stock and commit to concrete action plans”.¹⁵⁴ While the 2010 Summit welcomed the progress that had been made, it also expressed concerns about uneven implementation and the shortfalls.¹⁵⁵ It also asked for a more coordinated approach and called on the Secretary General of the United Nations to “avoid [a] fragmented approach” to the MDGs which would result in dysfunctional outcomes.¹⁵⁶

1.11. How do human rights relate to the MDGs?

The relationship between the MDGs and human rights starts with definitions accorded to human rights which include both CPR and ESCR. The MDGs attempt to address human rights but with a focus on the ESCR. Nonetheless, the 2003 Human Development Report

¹⁴⁸ Darrow, above n 142, at 59.

¹⁴⁹ Jan Vandemoortele and Enrique Delamonica “Taking the MDGs Beyond 2015: Hasten Slowly” (2010) 41 IDS Bulletin at 60.

¹⁵⁰ OHCHR, above n 42, at 24.

¹⁵¹ World Summit Outcome GA Res 60/1 A/Res/60/1 (2005).

¹⁵² World Summit Outcome GA Res 60/1 A/Res/60/1 (2005) at 4.

¹⁵³ United Nations, Factsheet (2010) UN Secretary-General Ban Ki-moon, statement issued by UN Department of Public Information <http://www.un.org/millenniumgoals/pdf/mdg_summit_factsheet.pdf>.

¹⁵⁴ United Nations, Factsheet, above n 153.

¹⁵⁵ Millennium Development Goals Summit Outcome Document GA Res 65/1, UN Doc A/RES/65/1 (Sept 17 2010) <http://www.un.org/en/mdg/summit2010/pdf/MDGSummit_Matrix_12Nov2010_rev2.pdf> at 1.

¹⁵⁶ At 1.

(HDR), which was dedicated to the MDGs, argued that the diverse human rights, including CPR and ESCR, are causally linked and mutually reinforcing.¹⁵⁷ The MDGs can create synergies contributing to poor individuals to escape poverty by allowing individuals to enjoy their rights and enhance their human capabilities.¹⁵⁸ As such, the MDGs do not mean an entitlement to a handout. Rather, they are claims to norms and rights, intended to economically empower individuals.¹⁵⁹

There are substantive and direct links between the MDGs and human rights.¹⁶⁰ For example, article 25 of the UDHR protects the right to an adequate standard of living, including food. MDG 1 covers reduction of poverty and hunger. Similarly, MDG 2 covers universal provision of primary education, and so reflects the right to universal primary education in article 26 of the UDHR. Given these links, the Millennium Declaration directly mentions human rights as a requirement for realising the MDGs.¹⁶¹

In addition to the direct linkages between human rights and MDGs, there is also an indirect link between the two. This is through the paradigm of human development because human development and human rights are linked via a “common denominator” which is human freedom.¹⁶² Development concerns substantive human freedoms,¹⁶³ creating conditions for people to be able to live in dignity¹⁶⁴ and, therefore, human rights are an extension of these freedoms.¹⁶⁵ The MDGs allow opportunities and human capabilities to be enlarged, which in turn enhance freedom of choice. Human rights protect these freedoms and choices.¹⁶⁶ Seen this way, both human rights and the MDGs mutually reinforce and supplement each other.

1.12. Weaknesses of the MDGs

In addition to being donor driven, the MDGs have also come under criticism for only aiming to halve global poverty rates by 2015. Thomas Pogge contends the MDGs lacked serious aspiration as they implied leaving the other 50 percent of the world population in de-humanising poverty.¹⁶⁷ In any case, halving the number of people who were hungry was not something new and only in 1996, four years earlier, the World Food Summit in Rome had pledged “achieving food security for all and to eradicate hunger in all countries” – with an

¹⁵⁷ UNDP *Human Development Report* (2000) <hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf> at 73.

¹⁵⁸ At 23.

¹⁵⁹ At 8.

¹⁶⁰ Selim Jahan *Millennium Development Goals and Human Rights: Analytical and Process Linkages, Practical work and UNDP* (2004) <www.cihc.org/members/resource_library_pdfs/2_Law_and_Protection/2_6_Rights_based_Assistance/HR_approach_to_Poverty_Reduction.pdf> at 2.

¹⁶¹ At 2.

¹⁶² At 2.

¹⁶³ Amartya Sen *Development as Freedom* (Anchor Books, New York, 2000) at 87.

¹⁶⁴ Karin Arts *Integrating human rights into development cooperation: the case of the Lomé Convention* (2000, Kluwer Law International Hague, Netherlands) at 22.

¹⁶⁵ Sen, above n 176, at 36.

¹⁶⁶ Jahan, above n 160, at 2.

¹⁶⁷ Thomas Pogge “Global Justice and the First UN Millennium Development Goal: A Cause for celebration?” (11 September, 2003) International Labour Organisation <<http://www.ilo.org/global/lang--en/index.htm>> at 2.

immediate view to reduce the number of undernourished to half of the present level no later than 2015.¹⁶⁸

In addition, MDG 1 is seen as a gross tolerance of poverty as millions are dying due to lack of access to food. Some have termed this situation, albeit exaggeratingly, as “the biggest crime committed against humanity”.¹⁶⁹ The same criticism can be levelled at MDG 7 which requires states to halve the proportion of the world population who do not have access to sustainable drinking water. MDGs 1 and 7 are also inconsistent with the human rights principle of nondiscrimination as leaving out the other 50 percent effectively breaches their basic right to clean drinking water.

Critics have also argued that the MDGs lacked consultation and that they had merely been put forward by diplomats.¹⁷⁰ The suffering communities or countries were not consulted and did not provide input in their formulation. As a result, the MDGs adopted a “top-down and not a grassroots approach”.¹⁷¹ Despite these weaknesses, the post September 2015 framework provides another window to continue helping people and address these weaknesses and perceived shortcomings.

1.13. The post September 2015 framework

In September 2015, the eyes and hopes of many millions were on the Sustainable Development Goals (SDGs) where all stakeholders and governments agreed and endorsed the universality, interrelatedness and indivisibility of human rights, and by extension the SDGs. While the priority areas for a post 2015 framework remained as food security, sustainable agriculture, energy, education, water and sanitation, poverty eradication and health,¹⁷² the UNGA agreed on 17 new SDGs, aimed at ending poverty, protecting the planet, and promising prosperity for all.¹⁷³

The MDGs were not written from a human rights perspective and this was one of the main criticisms levelled at the MDGs. Since then, although it had been stressed that the SDGs will need to take this into account so that the post 2015 framework formulates the SDGs in the

¹⁶⁸ At 2.

¹⁶⁹ At 6.

¹⁷⁰ Sakiko Fukuda-Parr and David Hulme (2011) “International Norm Dynamics and the “End of Poverty”: Understanding the Millennium Development Goals. *Global Governance: A Review of Multilateralism and International Organizations*” (2011) 17 (1) *Global Governance* 36 at 18.

¹⁷¹ Philip Alston “A Human Rights Perspective on the Millennium Development Goals.” Background paper for the UN Millennium Project Task Force on Poverty and Economic Development (UN Millennium Project, New York, 2004) at 14.

¹⁷² Elisabeth Prammer and André Martinuzzi *The Millennium Development Goals (MDGs) and the Post-2015 Debate*, (European Sustainable Development Network, Case Study No 13, 2013) European Sustainable Development Network <www.SD-NETWORK.eu> at 6.

¹⁷³ United Nations Development Programme (UNDP) *Sustainable Development Goals (SDGs) Time For Global Action* (2015) United Nations <<http://www.un.org/sustainabledevelopment/sustainable-development-goals/>>.

language of human rights,¹⁷⁴ human rights have remained “peripheral to the SDGs”.¹⁷⁵ The draft declaration for the SDGs showed an immense “disconnect between the declaratory parts and the SDGs”.¹⁷⁶ Although the UN claims the SDGs cover issues related to all human rights,¹⁷⁷ including ESCR and the R2D, the 17 SDGs do not explicitly mention human rights.¹⁷⁸ Unfortunately, the UNGA, unlike its previous stance, took a very cautious approach to human rights and failed to send a strong message that human rights are essential to the conception and implementation of the SDGs.¹⁷⁹

In September 2015, Afghanistan also continued its transition from the MDGs to the SDGs by joining the rest of the international community to endorse the 15 year plan to guide the international community in its shared efforts to “end extreme poverty, fight inequality and injustice as well as protect our planet”.¹⁸⁰ While the SDGs do offer hope and determination for human rights in the future, they were only endorsed in late 2015. As such, discussing them here is beyond the scope of this research. Nonetheless, both SDGs and MDGs were expected to integrate human rights in the design of programmes and planning. One way to do so was to ensure the indivisibility of human rights on the ground where all individuals have access to basic rights. Unlike the conventional needs-based approach, such an integration cannot be rhetorical but one that emphasises the practical aspects of integrating human rights into development discourse and initiatives.

1.14. Introduction to integrating human rights into development discourse

1.14.1. Needs-based approach vis-à-vis human rights-based approach

Formerly, the most prevalent approach to addressing rights within development discourse was a needs-based approach. The needs-based approach defined poverty as “absence or lack of basic services” and remained the most favoured approach by development NGOs.¹⁸¹ Even UN agencies such as the United Nations Development Programme (UNDP) hardly talked about human rights prior to the 1990s and were subsequently not expected to do anything with human rights in their programmes.¹⁸² The needs-based approach focused on needs and ignored the structural causes of poverty. Needs were seen as an aspiration which could be

¹⁷⁴ Prammer and Martinuzzi, above n 172, at 6.

¹⁷⁵ Bertrand G Ramcharan *Human Rights And The SDGs: A Side-Lined Priority?* (Ralph Bunche Institute for International Studies, Graduate Center, Briefing 31, September 2015) Future United Nations Development System <http://futureun.org/media/archive1/briefings/FUNDS_Brief31_Human_Rights_SDGs_July2015.pdf> at 1.

¹⁷⁶ At 1.

¹⁷⁷ The Office of the United Nations High Commissioner for Human Rights (OHCHR) and the 2030 Agenda for Sustainable Development <www.ohchr.org/Documents/Issues/MDGs/Post2015/TransformingOurWorld.pdf> at 1.

¹⁷⁸ Ramcharan, above n 175, at 2.

¹⁷⁹ At 2.

¹⁸⁰ Douglas Keh Country Director, United Nations Development Fund, Afghanistan and its Sustainable Development Goals (Pazhwad News Agency, 27 September 2015) <<http://www.pajhwok.com/en/opinions/afghanistan-and-sustainable-development-goals>>.

¹⁸¹ Cormac Russell *From Needs to Assets: Charting a Sustainable Path Towards Development in Sub-Saharan African Countries* (Global Sustainable Development Conference, Practical Action Publishing, 2009) Asset Based Community Based Institute <<http://www.abcdinstitute.org/publications/downloadable/>> at 2.

¹⁸² Philip Alston “The rights framework and development assistance” (1995) 34 Development Bulletin 1 at 11.

quite legitimate, but were not necessarily associated with an obligation on the part of governments to provide them.

A needs-based approach is met through benevolent or charitable actions which is often understood as giving of assistance by richer people to those who have either less or nothing.¹⁸³ Under the needs-based approach, the so-called beneficiary does not have any say in the process other than to receive charity. It was, therefore, assumed that providing assistance was a charity and the aid sent from the richer North was for the poor in under-developed and developing countries.

In a needs-based approach, individuals are seen as “passive beneficiaries” who receive assistance whereas individuals in HRBA are active participants who are empowered through their rights.¹⁸⁴ Moreover, the recognition of needs may be different from culture to culture and a needs-based approach may not generate an obligation but sympathy, while a rights-based approach will imply obligations and responsibilities.¹⁸⁵ For example, a right can be enforced before the government and entails an obligation on the part of the government to honor it. A needs-based approach creates a mentality and culture of dependency, turning the vulnerable communities into more vulnerable ones when the next crisis hits them.¹⁸⁶

On the other hand, HRBA takes a holistic approach by providing an enabling environment and promoting a strategy of empowerment and accountability.¹⁸⁷ Empowerment is designed to provide people with “capabilities to change, influence and improve their own lives”.¹⁸⁸ For each right, there is a corresponding duty bearer who is responsible, and more importantly, the duty bearer can - at least theoretically - be held accountable.

Although different actors may have different understandings of what HRBA is, the definition provided by the Office of the High Commissioner for Human Rights (OHCHR) may be the most comprehensive. According to the OHCHR, HRBA is a conceptual framework for the purposes of development which is normatively based on international human rights standards.¹⁸⁹ The HRBA is also “operationally directed to promoting and protecting human rights”¹⁹⁰ by seeking to analyse the inequalities that are at the centre of development issues and “redress discrimination, and unjust distribution of power and resources”.¹⁹¹

¹⁸³ Urban Jonsson *A Human Rights Approach to Development Programming* (United Nations Children’s Fund, New York, 2003) < <http://www.unicef.org/> > at 20.

¹⁸⁴ Lutheran World Federation *Rights-Based Approach. A Reference Material. Applying RBA in the Project Cycle* (Uganda Programme, October, 2011) Danish Mission Council Development Department < <http://www.dmcdd.org/> > at 16.

¹⁸⁵ Lutheran World Federation, above n 197, at 16; Nyamu-Musembi and Cornwall, above n 118, at 2.

¹⁸⁶ Russell, above n 181, at 2; Jonsson, above n 183, at 20.

¹⁸⁷ Russell, above n 181, at 12.

¹⁸⁸ At 12.

¹⁸⁹ OHCHR, above n 22, at 15.

¹⁹⁰ At 15.

¹⁹¹ At 15.

Thus, HRBA focuses on processes and impacts while a needs-based approach focuses on the immediate needs, inputs and immediate outcomes. As mentioned earlier, under the needs-based approach, individuals are seen as recipients of aid and may create a culture of dependency among communities while HRBA involves project participants to learn how to analyse their own situations, attribute responsibility and work out ways to improve their situations.¹⁹² That is why HRBA focuses on structural issues and problems and not immediate causes of problems.¹⁹³

Given the shortcomings of the needs-based approach, one reason HRBA has attracted both donors and development practitioners is because it is aimed at finding more sustainable solutions. Such an approach requires more than benevolence and a change in language, attitudes and decision-making patterns;¹⁹⁴ it requires a paradigm shift to enable integration of human rights in development work.

1.14.2. Different approaches to integrate human rights into development

Over the last few years, different approaches have been used to integrate human rights into development work. Some of these approaches may be superficial while other approaches are intended to integrate human rights in development work in a way where programmes are framed using human rights language and standards.

In the 1990s, the Swedish Ministry of Foreign Affairs, a leading proponent of integrating human rights in development, used three approaches, namely (1) development policy dialogue; (2) development projects strengthening human rights and democracy; and (3) integrating human rights and democracy into development.¹⁹⁵ In 2010, the World Bank offered three modes of integration: (i) ‘non-explicit integration’ which acknowledges a substantive overlap between the areas covered by human rights and development, but does not embrace an explicit commitment to human rights; (ii) the ‘integration of human rights principles’ which entails the strategic and sectorial integration of human rights principles, while also applying other perspectives; and (iii) the integration of human rights accountability whereby legal accountability is emphasised, and programming is explicitly framed in human rights norms and obligations.¹⁹⁶

These approaches illustrate an evolution in donor approaches and policies towards how communities and participants benefit from development assistance under their portfolios.

¹⁹² Molyneux and Lazar (2003) at 9, as cited by David D’Hollander, Marx, and Wouters, above n 5, at 34.

¹⁹³ Jakob Kirkemann Boesen & Tomas Martin *Applying a Rights-Based Approach – An Inspirational Guide for Civil Society* (The Danish Institute for Human Rights, 2007) Child Rights International Networks < https://www.crin.org/en/docs/dihr_rba > at 10; Oxfam America *Challenges and Opportunities of Implementing a Rights-based Approach to Development: An Oxfam America Perspective* (Northern Relief and Development NGOs, July 2-4, 2001, Balliol College, Oxford) at 5.

¹⁹⁴ Jonsson, above n 183, at 21.

¹⁹⁵ Swedish Ministry of Foreign Affairs (SMFA *Human Rights in Swedish Foreign Policy 2010 - 2014* (Government Communication, Stockholm, 2003) at 17.

¹⁹⁶ Siobhán McInerney-Lankford Hans-Otto Sano *Human Rights Indicators in Development* (World Bank, Washington DC, 2010) at 29.

These approaches also indicate that donors move away from the rhetoric of international aid and reach out to the most marginalised communities to find more sustainable solutions to their problems, in partnership with communities. These different approaches, aimed at integrating human rights into development, bring people to the heart of interventions where realisation of human rights becomes the goal of development.

This research particularly focuses on the approach used by the World Bank given its leading role on sustainable poverty reduction. The World Bank has gone through five policy approaches to integrating human rights in development work. They are: (1) implicit human rights work; (2) human rights projects; (3) human rights dialogue; (4) human rights mainstreaming; and (5) human rights-based approaches.¹⁹⁷ However, before coming to a detailed overview of the HRBA, some of the other approaches merit brief discussion as donors do not necessarily chronologically follow these approaches.

1.14.2.1. Implicit human rights work

Under this approach, agencies are not expected to work explicitly on human rights. Rather, the agencies may like to work on other matters such as projection, empowerment or such as governance. The content goal of the project is repackaged in human rights language.¹⁹⁸ Normally, this approach is used in highly hostile environments where human rights are seen as a western agenda and while, in essence, the work may be related to human rights, both the project and staff avoid using human rights language to avoid possible conflict and reaction. Critics have argued that the human rights language in “repackaging development” is harmful as it suggests human rights is a feel good term for development.¹⁹⁹

1.14.2.2. Human rights projects

Under this approach, projects specifically target realisation of specific rights such as freedom of expression, the right to vote and creation of enterprise and economic opportunities.²⁰⁰ Other times, it could be a human rights project to specifically promote women’s rights. Normally, these are standalone projects aimed at contributing to human rights. As such, these can be substantive human rights projects and may cover both awareness and economic and livelihood opportunities.

1.14.2.3. Human rights dialogue

Under this approach, foreign policy from the respective donors makes aid conditional on human rights issues. Under this approach, states with a history of human rights violations are engaged in a dialogue on human rights under the presumption that sincere dialogue will

¹⁹⁷ OECD, above n 2, at 23.

¹⁹⁸ At 23.

¹⁹⁹ Uvin, 2004, at 51, as cited D’Hollander, Marx, and Wouters, above n 5, at 14.

²⁰⁰ OECD, above n 2, at 24.

result in improvements on human rights. Aid, as such, is then provided to states that show willingness to engage in such dialogue. Where recipients of aid continue to be involved in significant violations of human rights, aid modalities and volumes may be affected.²⁰¹ While this may be a good incentive to the government, it could also result in collective punishment of the ordinary population who may have no direct association with the state in violation of human rights.

1.14.2.4. Human rights mainstreaming

Under this approach, donors expect recipient countries or development NGOs to ensure human rights are “mainstreamed” into activities undertaken whether they relate to basic services or livelihoods.²⁰² Although mainstreaming may be a buzz word, it identifies the immediate causes of poverty. Once such an analysis is carried out, human rights are then incorporated into programming. Human rights considerations are taken into account in new projects and different tools are developed to facilitate this process.

1.14.2.5. Human rights-based approach

Under this approach, human rights are seen to be serving the main purpose of development. It requires a new approach to development. It requires institutional change where human rights are integrated into the design of national policies and programmes.²⁰³ Agency mandates are redefined in terms of human rights, seeking a more structural, systematic and holistic approach to development and social change.²⁰⁴ This is seen as the highest level of integration of human rights into development.

In principle, HRBA is a concept for human development that is based on international human rights standards and is directed to operationalise human rights in development.²⁰⁵ HRBA is increasingly seen as a critical approach to tackle existing inherent inequalities by analyzing these inequalities, discriminatory practices and imbalance in power relations that are often the main challenges to development.²⁰⁶

Although a lack of consensus on a single approach has led to a variety of practices and terminologies among different actors,²⁰⁷ most donor projects would fit within one of the five approaches advanced by the World Bank. While the different terminologies and approaches may be nuanced, ultimately, they are united by a common purpose.²⁰⁸ Development is seen

²⁰¹ At 24.

²⁰² At 24.

²⁰³ At 24.

²⁰⁴ At 24.

²⁰⁵ OHCHR, above n 22, at 15.

²⁰⁶ Dan Banik “Support for human rights-based development: reflections on the Malawian Experience” (2010) 14 (1) *The International Journal of Human Rights*, 34 at 36.

²⁰⁷ D’Hollander, Marx, and Wouters, above n 5, at 6.

²⁰⁸ International Human Rights Network (IHRN) *Human Rights-Based Approaches to Development*, (Terre des hommes, 2005), Terre des hommes <http://tdh-cp-org.terredeshommes.hu/rcpp_content/country_pages/eu/hrba_overview_ihrn.pdf> at 5.

as a human right, and human rights considerations are taken into account in development policies.

More recently, the World Bank has used the HRBA to “enhance inclusive participation in development” and reduce poverty.²⁰⁹ Development practitioners prefer the HRBA because it ensures “human rights are integrated into development plans, policies and projects from the outset”.²¹⁰ This approach, which has been referred to as the “scaffolding of development policy”,²¹¹ seeks to ensure human rights are at the heart of policy making where people have the ability to participate in, influence and monitor their rights.

HRBA requires institutional policy commitments, changes in how aid is provided and more importantly a clear articulation of human rights as an objective of development.²¹² In fact, communities and project participants are at the heart of this approach – with special focus on marginalised and vulnerable groups who are given a voice to participate in decision-making processes.²¹³ It is argued that HRBA also has advantages over other development approaches, including the requirement for genuine participation of the most marginalised and vulnerable groups.²¹⁴ Therefore, this study also adopts the HRBA as a tool to assess the effectiveness of the NSP in Afghanistan.

Since HRBA is the latest trend and given its appeal, a number of leading donor agencies and development actors have now also embraced the approach for their work on the ground. These agencies include the Swedish Development Agency (SIDA), the British Department for International Development (DFID), the Australian Aid Agency (Ausaid), and the New Zealand Aid Programme.²¹⁵ Since 2003, the UN Common Understanding (UNCU) requires UN agencies to apply consistently HRBA to all their programmes and activities.²¹⁶ While this is laudable, the extent of application on the ground is a different matter, and beyond the scope of the current study. Therefore, for the reasons stated, and increasing attention given to this by donors,²¹⁷ this research paper adopts the World Bank approach as this is the dominant approach among leading donors for development aid. I, now, turn to study the main principles of the HRBA in more detail.

²⁰⁹ Nyamu-Musembi and Cornwall, above n 118, at 1.

²¹⁰ IHRN, above n 208, at 46.

²¹¹ Overseas Development Institute *what can we do with a Rights-Based Approach to Development?* (Briefing Paper, 03 September, 1999) <<https://www.odi.org/>> at 1

²¹² OECD, above n 2, at 34.

²¹³ At 25.

²¹⁴ Banik, above n 206, at 36.

²¹⁵ Paul J Nelson “Human Rights, the Millennium Development Goals, and the Future of Development Cooperation” (2007) 35 (12) World Development 2041–2055, at 2044; Government of New Zealand, Foreign Affairs and Trade “Our Approach to Aid” <<https://www.mfat.govt.nz/en/aid-and-development/our-approach-to-aid/>>.

²¹⁶ The United Nations Development Group was founded in 1997 and comprises the 32 funds, programmes, agencies, and other UN bodies that play a role in development. For more details, please see <<http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>>.

²¹⁷ OECD, above n 2, at 11.

1.15. Core principles of the HRBA

While HRBA is the preferred approach of an increasing number of donors, opinions have differed on what exactly constitutes HRBA. One line of thought is that HRBA is based on principles of participation, accountability, nondiscrimination, empowerment and linkages to human rights standards, which are collectively known as PANEL. PANEL is recognised as a significant tool²¹⁸ to promote the HRBA and help organisations to “identify risks, priorities and opportunities in relation to specific areas of operation”.²¹⁹ In contrast, the Stamford Common Understanding, which was approved by the UN Development Group, identifies extra principles such as universality and inalienability and indivisibility; inter-dependence and interrelatedness as core elements of HRBA.²²⁰

The World Bank, which has been at the forefront of the HRBA discourse and behind many major development initiatives, contends that the core principles of the HRBA are -1) express application of human rights framework; 2) empowerment; 3) participation; 4) nondiscrimination and prioritisation of vulnerable groups; and 5) accountability.²²¹ These core principles are derived from applicable international, regional, or domestic human rights instruments,²²² and are seen as interconnected and internationally recognised.²²³ There is extensive overlap between the PANEL approach and the World Bank approach and they are almost identical. Since the World Bank has been at the forefront of poverty reduction and has been the leading proponent of the HRBA, this research adopts the World Bank endorsed principles for HRBA. I study each principle in more detail below.

1.15.1. Express application of human rights framework

Under the human rights framework, all development work takes place in light of the legal obligations of states. This can be by way of incorporating human rights treaties into national legislative frameworks and devising relevant policies promoting and realising rights – consistent with the concept of obligation of conduct. For example, under HRBA, states are expected to explicitly refer to human rights obligations in their national policies and development strategies.²²⁴ The human rights framework requires states to progressively

²¹⁸ Victorian Equality Opportunity and Human Rights Commission (VEOHR) *From Principle To Practice: Implementing The Human Rights-Based Approach In Community Organisations* (Victorian Equal Opportunity and Human Rights Commission, Super Print, Victoria, 2012) <http://www.humanrightscommission.vic.gov.au/> at 39.

²¹⁹ VEOHR, above n 218 at 19; the World Bank uses similar terminology, covering the same five areas. For more information, see OECD, above n 2, at 69.

²²⁰ The United Nations Development Group was founded in 1997 and comprises the 32 funds, programmes, agencies, and other UN bodies that play a role in development. For more details, please see <<http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>>.

²²¹ OECD, above n 2, at 69.

²²² At 69.

²²³ IHRN, above n 208, at 5; these core principles are 1) express application of human rights framework, 2) empowerment, 3) participation, 4) non-discrimination and prioritisation of vulnerable groups and 5) accountability.

²²⁴ At 6.

provide education, health, shelter and employment.²²⁵ States are then expected to deliver these rights as per their obligation of results.

Although the legal obligations surrounding ESCR are based on international human rights treaties and principles contained in the UDHR, the ICESCR and other international human rights instruments,²²⁶ the exact nature and extent of legal framework for the HRBA is hard to measure. Nonetheless, states party to human rights treaties and instruments are under obligation to “respect, protect and fulfill human rights”.²²⁷ For instance, the legal obligation on what constitutes HRBA is enshrined in numerous documents, including the ICESCR, the Declaration on R2D and the Millennium Declaration, among others.²²⁸ Equally, the R2D requires states to encourage popular participation, for the full realisation of human rights in all spheres of development.²²⁹ The Millennium Declaration explicitly recognises the upholding of the UDHR.²³⁰

Despite such recognition, resource allocation from states, whether poor or rich, has always been a challenge for the application of human rights framework. The Maastricht Principles on Extraterritorial Obligations of States is seen as a significant development which has further clarified and identified legal responsibilities of countries under the human rights framework – and particularly in the areas of ESCR.²³¹ For example, under article 3 of the Maastricht Principles, while states are not responsible for the human rights of every person in the world, Principle 3 indicates that states ‘may have extraterritorial’ obligations in relation to human rights.²³²

1.15.2. Participation

The second key element of HRBA is participation. Development and participation are interconnected as participation allows communities to critically engage to claim and exercise their rights. Most approaches insist on participation. Yet, HRBA widens the concept of participation and demands “active, free, inclusive and meaningful participation”.²³³ Although meaningful and inclusive participation will differ from country to country - and even from province to province - it would require both men and women to take part in the design, implementation, monitoring and ownership of development activities.

²²⁵ At 6.

²²⁶ United Nations Portal on HRBA ‘the human rights-based approach to development cooperation – towards a common understanding across agencies’ <<http://hrbaportal.org/>>.

²²⁷ OECD, above n 2, at 34.

²²⁸ Maxi Ussar “Integration of the human rights-based approach into development policies and programmes: A guide for the New EU Member States” (Minority Rights Group International, London/Bodapest, 2011) Minority Rights Group <<http://minorityrights.org/>> at 7.

²²⁹ Declaration on Right to Development, above n 117.

²³⁰ Millennium Development Goals Summit Outcome Document, above n 155.

²³¹ De Schutter, et al (2012) as cited by D’Hollander, Marx, and Wouters, above n 5, at 53.

²³² De Schutter and others, above n 100, at 1090.

²³³ D’Hollander, Marx, and Wouters, above n 5, at 34.

Meaningful participation, in human rights terms, is a mechanism for ensuring that people have a say in the decision making process that affects their lives and that they become aware of their entitlements so that they can claim them.²³⁴ In particular, HRBA ensures participation of those who are “systemically excluded”.²³⁵ Inclusive and meaningful participation contributes positively to ownership and sustainability of community driven development processes and initiatives. Participation is also seen as a measure to ensure people become aware of their rights to demand social justice and change, and have control over their resources.²³⁶ This allows for a structural change to move from “informing people of fully planned and designed projects”, towards “rights holders controlling planning, process”. Essentially, therefore, participation becomes a right *per se* that communities shall exercise.²³⁷

In development context, where there is either insecurity or a weak state, project participants are less likely to have a say in their development projects affecting their lives. In the process, it becomes more challenging for women, marginalised people such as minorities and persons with disabilities as they may not be able to participate in the resource allocation or decision making process. As such, inclusive participation also helps mainstream gender and effect a behavioural change of accepting participation from both men and women.²³⁸

HRBA provides a voice to project participants, such as the marginalised, persons with disability and women, who may not have otherwise a fair and effective opportunity to influence the decision making process.²³⁹ On the other hand, participation should not be just in name but should be meaningful and should go beyond mere consultation. Meaningful participation not only creates but also promotes capacity to hold governments and duty bearers accountable whereby public decision making becomes more transparent.²⁴⁰ Thus, participation in HRBA is not done in a piecemeal fashion but is systematised and institutionalised. This way, inclusive participation becomes sustainable well after the intervention has ended.²⁴¹

²³⁴ Human Rights Council Of Australia *Symposium Papers - A Human Rights Approach to Development* (1995) <<http://www.hrca.org.au/wp-content/uploads/2008/05/symposium.pdf>> at 3.

²³⁵ At 27.

²³⁶ Swedish Ministry of Foreign Affairs *Change for Freedom: Policy for democratic development and human rights in Swedish development cooperation, 2010–2014* (Swedish Ministry of Foreign Affairs, Stockholm, 2010) Government Offices of Sweden <<http://www.government.se/>> at 13.

²³⁷ Hannah Miller “From ‘rights-based’ to ‘rights-framed’ approaches: a social constructionist view of human rights practice” (2010) *The International Journal of Human Rights* 915 at 916.

²³⁸ Valerie Miller, Lisa VeneKlasen and Cindy Clark “Rights-based Development: Linking Rights and Participation — Challenges in Thinking and Action” (Jan 2005) 36 (1) *Institute of Development Studies Bulletin* 33 – 40, at 32.

²³⁹ Urban Jonsson, above n 183, at 18.

²⁴⁰ Miller, VeneKlasen and Clark, above n 238, at 32.

²⁴¹ D’Hollander, Marx, and Wouters, above n 5, at 40.

1.15.3. Empowerment

A human rights-based approach to development should enable communities and project participants to be independent after the intervention or programme. Historically, the term empowerment has tended to emphasise power and personal relations.²⁴² Nonetheless, in the development context, it implies individual self-assertion for groups and communities, particularly the most marginalised and women who can exercise their rights to access resources but can also act to change, or at least influence positively, existing power relationships.²⁴³

In reality, empowerment is a process. It does not happen overnight or at the end of a particular initiative. It has different dimensions including a strong focus on building capacity of communities and project participants where they can begin to question the status quo and the rationale for existing projects and discover how power affects, both positively and negatively, their lives.²⁴⁴ In addition, more marginalised groups, such as women, minorities and persons with disabilities are able to express their views and find their voice in the decision making process. Specifically, with the UN Convention on the Rights of Persons with Disabilities, it is recognised that the issue of disability is now firmly established as a human rights issue. These groups should have a voice and influence the resource allocation process on how their needs should be prioritised. They should also be enabled to demand that states respect, protect and fulfill their rights and establish linkages with external stakeholders to raise more resources for their needs.²⁴⁵

1.15.4. Non-discrimination

Non-discrimination is a basic tenet which is based on fundamental principles within international law.²⁴⁶ Under this element, communities receive development assistance in a transparent manner and the rights are provided to all while making sure the most vulnerable communities are prioritised. The idea is to ensure people from different ethnicities, minorities and genders are not deprived from basic entitlements which may be enjoyed by the rest of the population within a locality.²⁴⁷ HRBA is consistent with the concept of substantive equality which ensures equality of outcomes, equal access and equal benefits for

²⁴² Miller, VeneKlasen and Clark, above n 238, at 34.

²⁴³ At 34.

²⁴⁴ At 32.

²⁴⁵ OECD, above n 2, at 10.

²⁴⁶ Charter of the United Nations, the Preamble; the Preamble and art 1, of the Universal Declaration of Human Rights

²⁴⁷ D'Hollander, Marx, and Wouters, above n 5, at 38; Darrow and Tomas, 2005, at 510, as cited D'Hollander, Marx, and Wouters, above n 5, at 1.

men and women.²⁴⁸ On the other hand, under the concept of formal equality men and women are regarded as the same without taking into account their biological differences.²⁴⁹

Therefore, HRBA pays special attention to disadvantaged groups, individuals in poverty, women and children. This makes HRBA different from the other approaches as it becomes inclusive and transparent where capacity of poor and excluded groups is built to enable them participate in the development process.²⁵⁰ Also, HRBA addresses the root causes of discrimination by integrating “an analysis of patterns of exclusion faced by poor people, vulnerable groups, and minorities, including indigenous population”.²⁵¹ Such an analysis also requires looking at the implications of existing development policies and strategies on such groups. Importantly, such an analysis goes well beyond the normal disaggregated data analysis under other approaches where the focus solely remains on how many men and women live in a given community. Rather, an analysis of this kind does take into account all the institutional, political, economic and social factors that contribute towards discrimination.²⁵²

1.15.5. Accountability

Accountability, which lies at the heart of HRBA, means different things to different people. In the development context, accountability refers to duty bearers and policy makers being held accountable by right holders.²⁵³ Seen in this context, duty bearers are accountable and answerable to communities whose lives are affected by their decisions.

Realisation of human rights is compromised in the absence of accountability.²⁵⁴ Similarly, lack of accountability in development policy has often been identified at the root of failing development efforts.²⁵⁵ Often, the case may be that there is little accountability between the duty bearers and rights holders, which may result in international development assistance and investment not having the desired impact. As such, HRBA becomes a means to establish a “platform to demand accountability”²⁵⁶ and strengthen inclusion and equality. In this process, it is important to build the capacity of local communities to know their rights and roles, enabling them to ask questions and hold the duty bearers accountable.

²⁴⁸ International Women’s Rights Action Watch (IWRAP) Building Capacity for Change: Training Manual on the Convention on the Elimination of all Forms of discrimination against Women (2001) Faculty of Law, University of Hong Kong <<http://www.law.hku.hk/hrportal/wp-content/uploads/file/Session5.pdf>> at 3 - 5.

²⁴⁹ At 2

²⁵⁰ Darrow and Tomas (2005), at 510, as cited D’Hollander, Marx, and Wouters, above n 5, at 1.

²⁵¹ At 1.

²⁵² OECD, above n 2, at 79.

²⁵³ Darrow, above n 142, at 81; Miller, above n 237, at 917.

²⁵⁴ Alston, above n 182, at 11.

²⁵⁵ D’Hollander, Marx, and Jan Wouters, above n 5, at 32.

²⁵⁶ Tomas (2005) at 173 as cited D’Hollander, Marx, and Wouters, above n 5, at 32.

Participation, which is a core element of HRBA, not only builds a community's capacity but also sharpens a community's understanding and significance of holding duty bearers accountable. Participation has added value to the HRBA approach as it puts increased emphasis on the accountability of policy makers and other actors towards citizens.²⁵⁷ Also, while the traditional human rights programmes focus on political accountability, i.e. fair and transparent elections or supporting local civil societies, improved accountability on the main outcomes of development work becomes a priority under the HRBA.²⁵⁸

In addition, human rights frameworks help advance accountability by holding duty bearers to account for their actions, as marginalised communities are empowered to demand that the state respect, protect and fulfill their rights.²⁵⁹ Although this may be difficult in post-conflict countries, in theory, HRBA clearly articulates the responsibilities of duty bearers towards right holders and in the process can establish a strong accountability paradigm.²⁶⁰

HRBA ensures the provision of basic rights in a transparent and fair manner. While the principles and core elements of HRBA are clear and powerful, concerns remain about states' commitment and capacity.

1.16. Conclusion

There are different perceptions about what exactly constitutes human rights. There are questions about their universality, eurocentrism, and ethnocentrism or whether they are grounded on rationality or natural rights. For instance, human rights are only understood, in some quarters, as CPR at the cost of millions not receiving ESCR. Some have even questioned if everyone is entitled to all these rights. Thus, human rights raise many questions, some controversial and others less divisive but still unanswered. Given these ideological differences, CPR continue to receive priority over ESCR. However, the good news is that while ESCR might have been subservient to CPR, the former has seen resurgence and increased acceptance, albeit more on paper with the UN and to a lesser degree on the ground.

The so called resurgence of ESCR has been captured well in major reports, including R2D, the Vienna Programme of Action, Millennium Declaration, the two Outcome Summits and now the framework for the Sustainable Development Goals. According to these UN documents, the universal nature of all human rights and fundamental freedoms is beyond question. While all these offer a normative and strategic framework for human rights, the resurgence will be seen as toothless until there is sufficient clarity on states' extraterritorial obligations vis-à-vis ESCR.

²⁵⁷ Office of the United Nations High Commissioner for Human Rights *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies* (Geneva, June 2012)

²⁵⁸ D'Hollander, Marx, and Wouters, above n 5, at 41.

²⁵⁹ OECD, above n 2, at 34.

²⁶⁰ At 71.

The MDGs served as the first collective international response to provide basic rights to millions to escape endemic poverty. In doing so, the MDGs provided a substantive link to human rights. However, since the MDGs only targeted 50 percent of the population, the other 50 percent were left to the mercy of God. That is one reason why the MDGs have left a negative legacy by representing a gross tolerance of poverty for the remaining 50 percent. While lack of funding may have played a part in not covering the other 50 percent, targets that are not 100 percent arguably breach human rights. Instead, had MDGs have been treated as rights and not goals, it would have been fitting to not have set any targets in the first place.

The SDGs, on the other hand, attempt to be more universal, at least in the sense they apply to all countries. While the SDGs do not explicitly mention human rights in its 17 goals, the SDGs go far beyond the MDGs by including principles surrounding ESCR and the right to development. These are encouraging developments. The SDGs offer hope to all those who do not have access to basic rights. While offering hope is good, it will not bring meaningful change. The SDGs will, therefore, require all states to incorporate human rights into their national policies and programming. SDGs will need to align with all the corresponding obligations under the UDHR and the two Covenants to have more sustainable and equitable development. Unlike the MDGs, a rights sensitive monitoring framework will be required to closely watch the progress on the ground.

While it is easy to claim human rights should be realised, its relationship vis-à-vis communities must be articulated. This relationship should start when governments formulate their national policies by integrating human rights as an entitlement for which governments are primarily responsible. The government, as duty bearer, should budget for development initiatives. Equally, the so called beneficiaries should be treated as rights holders. There should be a culture of accountability and transparency so communities take inclusive decisions to influence their future. Community members need to know their rights and be enabled to raise their concerns and, where necessary, hold the duty bearers accountable. The answers for these points lie in the principles of HRBA.

The HRBA provides plausible explanations to the aforementioned points by ensuring a holistic approach, recognising the fact to align needs of the communities with a future programme. At the heart of the HRBA analysis is the just and equitable distribution of power and resources. HRBA reaches out to the most marginalised and vulnerable populations by tackling the root causes of social inequalities, exclusion and poverty by allowing communities to be part of the design of the projects affecting their lives. HRBA gives a new meaning and direction to development where communities are part of the decision making process and development is seen as a human right. When individuals have the right to development, it allows them to have access to basic human rights, make their own decisions about their resources, get empowered and find sustainable and local solutions to local problems.

While a needs-based approach may be appropriate in an emergency context to cater for the most immediate needs, HRBA is process and impact driven. HRBA takes into account the shortcomings of the needs-based approach by attempting to find sustainable solutions. Such an approach to tackling existing inequalities requires states to fund development initiatives as part of their pledge to collectively work towards the realisation of human rights. In addition to ideological differences, scarce financial resources have proven to be a major obstacle, as the richer states are often the ones who finance the ESCR. Thus, it is unsurprising that there is continued resistance from major industrial countries to recognise ESCR as binding rights. The voting pattern has shown that most of the industrial countries have either voted against or abstained from voting when it comes to ESCR.

Human rights is an attractive and fashionable concept. It is appealing to everyone. It is even appealing to those who would otherwise engage in the violation of human rights or even appealing to those who think ESCR are not for all. While many would like to champion the cause of human rights, sometimes such calls might have been by way of rhetoric. Concrete steps are needed to not only advocate for such rights but also work towards their implementation on the ground, in a fair, transparent and equitable manner. Human rights need to address the widespread marginalisation and discrimination. Rights under both Covenants need to be realised in practice. While the West recognises CPR as genuine rights, it has mostly treated ESCR with scepticism. This needs to change as ESCR should have teeth and enjoy equal respect.

Individuals have dignity and their dignity should not be put between ESCR and CPR. All humans should be able to have access to drinking water, food, primary education, health and jobs as they are also necessary for enabling individuals to exercise their freedoms. If human beings are given access to one and not the other, it is difficult to assume one has had a dignified life. After all, this is not a life of luxury but basic rights, meeting basic needs which have historically been ignored.

Inequitable development is likely to be already contributing to the deteriorating security in numerous parts of the world, including Afghanistan. Security is a key condition for development but a lack of equitable development heavily contributes to insecurity and other grievances. Development initiatives have to be framed from a human-rights language as there will be no development without access to basic human rights. Where communities are not provided with human rights and the right to development, insecurity persists – a point that will be studied in more detail in Chapters Two and Three.

It is high time not to overlook anymore the effect deprivation of ESCR has on the dignity of human beings. In the absence of such basic rights and inequitable development, poverty and exclusion will continue to contribute to the security threats we face today. In order to avoid further erosion into such a situation, international collaboration is required to provide the necessary political goodwill and financial resources towards a fairer world, where people

have access to the most basic rights, and hope for a dignified life. The MDGs, the Afghanistan National Development Strategy and, by extension, the National Solidarity Programme in Afghanistan, intended to precisely do the same, which will be the subject of discussions in the next chapter.

Chapter Two

Introducing Development in Afghanistan

In this chapter, I present the current development context in Afghanistan, including the country's human rights framework. I attempt to set out the programmatic and operational requirements of the National Solidarity Programme, setting the scene for Chapters Three and Four. In addition, I also briefly set out the Citizens' Charter which is expected to build on the work of the National Solidarity Programme and continue to embrace a more consistent human rights-based approach.

2.1. The magnitude of deprivation in Afghanistan after 9/11

In 2001, the magnitude of deprivation in Afghanistan was beyond imagination. The country had suffered from many years of civil strife and the aftermath of Soviet invasion. Beyond the main cities, very few had access to basic rights such as health, education, clean drinking water, and food. Jobs were in short supply. At the time of the Millennium Declaration, Afghanistan was in total isolation with the hard-line Taliban in power. The country was effectively under international sanctions due to the Taliban leadership hosting Osama Bin Laden after the attacks of 9/11 in 2001. These tragic events brought pain and suffering not only to victims in the US but also to ordinary Afghans who became victims of numerous bombings and night raids by the US forces. The 9/11 tragedies turned the international community's attention to the widespread problems in Afghanistan.

In 2004, a couple of years after the fall of the Taliban, the UN termed the statistics on poverty "overwhelmingly depressing".¹ Nonetheless, the Millennium Development Goals (MDGs) provided the country, which had no infrastructure and hardly any functioning schools or clinics in the rural communities, with an opportunity to "transform the blighted lives of Afghan children, women and men".² Thus, the MDGs are seen as a firm commitment of the international community to Afghanistan and its people to improve the depressing statistics.

The National Solidarity Programme (NSP), discussed in greater detail below, was one of 22 National Priority Programmes to encourage development by improving social and economic conditions in the country as part of Afghanistan's National Development Strategy (ANDS). The ANDS serves as Afghanistan's poverty reduction strategy which uses pillars and benchmarks such as "security, rule of law, human rights and economic and social development".³ The ANDS is specifically intended to help Afghanistan achieve its benchmarks towards the MDGs.⁴

¹ United Nations Development Programme *Opening Doors to Opportunity: Afghanistan's Millennium Development Goals* (2004) <www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Afghanistan/Afghanistan_MDGReport_2004.pdf> at 3.

² At 3.

³ Afghanistan National Development Strategy 2008 – 13 (ANDS), Islamic Republic of Afghanistan, United Nations Development Programme <www.undp.org.af/publications/KeyDocuments/ANDS_Full_Eng.pdf> at 5.

⁴ At 9.

Globally, there were eight MDGs, which included: reduction of poverty and hunger; achieving universal education; promotion of gender equality; reduction of child mortality; maternal deaths; combating HIV, malaria and other diseases; ensuring environmental sustainability and developing global partnerships.⁵ Due to the worsening security situation, a 9th goal by way of security was also added in 2004 to address the security issues in Afghanistan.⁶

Since Afghanistan was still suffering from internal strife and Taliban rule in 2000, the Government was only able to endorse the MDGs in 2004 and certain targets had to be modified to reflect on the ground realities.⁷ Therefore, Afghanistan received an “extension to achieve the MDGs by 2020”.⁸ Despite all the odds, Afghanistan has been making “tremendous progress and is transitioning socio-economically and politically” to build institutions and reform governance.⁹

Under the different National Priority Programmes (NPPs), for instance, Afghanistan has been keeping pace in key areas and has made considerable and steady progress, particularly in making sure over 7 million children attend primary school. Out of these, 4.6 million have been boys while 2.4 million have been girls.¹⁰ Afghanistan has made substantial gains in relation to female representation in the legislature. Female Members of Parliament now make up just over 27 percent of the whole membership for the House of Representatives and women have 10 percent of political seats in Cabinet.¹¹ These are significant developments since 2002.

Different NPPs contribute towards the MDGs in Afghanistan. Some have national coverage and others do not. While the NPPs for the health and education sectors have extensive coverage, the National Solidarity Programme (NSP) has almost countrywide coverage – with an initial objective to have national rollout. The NSP has provided nearly all communities across the country with a financial entitlement. This has rendered the NSP to be at the forefront of development initiatives to provide rights, as part of entitlement to the rural communities in Afghanistan. The NSP covers all provinces, including marginalised communities and geographically challenging areas, except those that have been extremely insecure. Also, the NSP requires extensive and inclusive participation so that communities are empowered and sustainable solutions are found. Before discussing the NSP in more detail, the following paragraphs briefly introduce Afghanistan and its development context.

⁵ Millennium Development Goals Status in Afghanistan, United Nations Development Programme
<www.af.undp.org/content/afghanistan/en/home/library/mdg.html>.

⁶ ANDS, above n 3, at 9.

⁷ At 8.

⁸ At 9.

⁹ Islamic Republic of Afghanistan, Ministry of Economy, Millennium Development Goals Report 2012 (2013)
<www.af.undp.org/content/dam/afghanistan/docs/MDGs/Afghanistan%20MDGs%202012%20Report.pdf> at 4.

¹⁰ The United Nations Children's Emergency Fund *Education in Afghanistan* (Factsheet, November 2011)
<http://www.unicef.org/infobycountry/files/ACO_Education_Factsheet_-_November_2011_.pdf>.

¹¹ Ministry of Economy, above n 9, at 4.

2.2. Brief introduction to Afghanistan and its development context

Afghanistan has an estimated population of at least 25 million, is landlocked and is situated at the crossroads of Central Asia.¹² Its history is replete with violent conflicts, civil strife and wars, including the Soviet occupation, the subsequent civil war, the coming to power of the Taliban, the American intervention and the ongoing insurgency.¹³

Although Afghanistan has immense natural resources,¹⁴ the country entirely relies on international aid for all its development needs as it strives to rebuild itself. This has mainly been done through the Afghanistan Reconstruction Trust Fund (ARTF) which was established in 2002 to provide a coordinated financing mechanism for Afghanistan's budget and priority national development programmes.¹⁵ The ARTF delivers important results within key Millennium Development Goals, including education, agriculture, rural development and governance and is supported by 33 donors and administered by the World Bank.¹⁶

The current humanitarian situation in Afghanistan remains very fragile. For example, the chronic insurgency and on-going conflict have affected over 6 million Afghans where almost 200,000 persons have been displaced.¹⁷ This represents a 64 percent increase from 2014.¹⁸ Similarly, around 70 percent of the population lives on less than two dollars per day and hardly meet their basic requirements.¹⁹ Given the widespread insecurity, the government prioritises its security needs over basic needs of its population by allocating half of its \$1.8 billion revenue to national security, leaving less funding for development projects.²⁰

Despite the above, Afghanistan has also made encouraging strides since the adoption of the MDGs. Afghanistan's average annual Human Development Index (HDI) growth rate has increased to 2.46 per cent in 2000-2013 from 1.42 in 1990-2000.²¹ Since the implementation of the MDG in Afghanistan, and given the increased international attention between 2002 and 2012, Afghanistan's economy has also made some gains, with annual growth rates rising above 9 percent GDP and peaking at just over 11 percent during 2012 and 2013.²² Some of

¹² Save the Children in Afghanistan, Fact Sheet on Afghanistan (2009) < <http://www.savethechildren.org/>>.

¹³ United States Institute of Peace, *Lessons from Afghanistan's History for the Current Transition and Beyond* (2012) <www.usip.org/sites/default/files/SR314.pdf>, accessed on 10 October 2014> at 2.

¹⁴ The New York Times quoted senior American officials that the United States has discovered nearly \$1 trillion in untapped mineral deposits in Afghanistan, far beyond any previously known reserves and enough to fundamentally alter the Afghan economy and perhaps the Afghan war itself. For more details, please see The New York Times *U.S. Identifies Vast Mineral Riches in Afghanistan* (June 2010) <www.nytimes.com/2010/06/14/world/asia/14minerals.html?_r=0>.

¹⁵ The Afghanistan Reconstruction Trust Fund; for more details, please visit <<http://www.artf.af/>>.

¹⁶ The Afghanistan Reconstruction Trust Fund; for more details, please visit <<http://www.artf.af/>>.

¹⁷ United Nations Office for Coordination of Humanitarian Assistance (UNOCHA) Humanitarian Needs Overview Humanitarian Response (2016) < www.humanitarianresponse.info > at 5.

¹⁸ At 5.

¹⁹ At 7.

²⁰ At 13.

²¹ UNOCHA, above n 17, at 3.

²² The World Bank, Afghanistan Economic Update April 2013, as cited by UNOCHA above n 17, at 5.

the growth might have been artificial, however, as the US spent billions in Afghanistan as part of its military spending. It has been reported, for example, around \$641 billion had been spent between 2002 and 2013 by the US government in Afghanistan in direct military spending.²³ Very little of this has been spent in the development sector though and “most of it went to erratic targets”.²⁴ The country remains fragile due to the increasing insecurity, the rising insurgency and dwindling international assistance. Despite such risks and challenges, the National Solidarity Programme (NSP) has been the only Programme that has realised basic rights to the majority of rural communities.

2.3. The human rights framework in Afghanistan

The 2004 Afghan Constitution mandates the government to “observe the United Nations Charter, inter-state agreements, as well as international treaties that Afghanistan has joined, and the Universal Declaration of Human Rights.”²⁵ Afghanistan has ratified the ICCPR, ICESCR, the Convention of the rights of the Child (CRC) and the Convention on the Rights of Persons with disabilities (CRPD).²⁶ The Afghan Constitution guarantees individual rights and mentions the “importance of individual rights” by noting Afghanistan’s respect for the UDHR and emphasising the importance of “protecting . . . human rights, and attaining peoples’ freedoms and fundamental rights”.²⁷ The Afghan Constitution also allow citizens to exercise freedom of expression and assembly.²⁸ Elsewhere, Chapter 3 of the Afghan Constitution covers most CPR as covered by ICCPR, such as liberty and human dignity (art 24), life (art 23), freedom of religion (art 2) and equality and non-discrimination (art 22), among others.²⁹

Since Afghanistan has ratified the ICESCR, ESCR have been incorporated in the Afghan Constitution. For example, article 52 of the Constitution obliges the government “to provide free means of preventive health care and medical treatment, and proper health facilities to all citizens of Afghanistan in accordance with the law”.³⁰ Elsewhere, the Afghan Constitution has enshrined properly land ownership rights (art 40), right to education (art 43), and right to employment (art 48). The inclusion of these rights in the Constitution is a strong indication that the Afghan Government sees itself responsible for the wellbeing of Afghan citizens. Nonetheless, where resources are scarce, such an undertaking places an

²³ Anthony H Cordesman and Arleigh A Burke *The U.S Cost Of The Afghan War: FY2002-FY2013* (Centre for Strategic and International Studies, 2012) <http://csis.org/files/publication/120515_US_Spending_Afghan_War_SIGAR.pdf> at 3.

²⁴ At 2.

²⁵ The Constitution of Afghanistan, article 7.

²⁶ The Office of the United Nations High Commissioner for Human Rights (OHCHR) Ratification Status by Country/Afghanistan <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=en>; Stephanie Ahmad, Alexander Benard, Jason Berg, Ben Joseloff, Max Rettig, Anne Stephens Lloyd and Eli Sugarman ‘An Introduction to the Law of Afghanistan’ (Third edition, Palo Alto, California, 2011) at 227.

²⁷ The Constitution of Afghanistan, The Preamble.

²⁸ The Constitution of Afghanistan, articles 34 and 35.

²⁹ Ahmad and others, above n 26, at 229.

³⁰ The Constitution of Afghanistan, art 52.

enormous financial liability on the state.³¹ As such, realisation of the rights of each and every Afghan citizen remains an aspiration.³²

2.4. Afghanistan's reporting to Economic, Social and Cultural and Human Rights Committees

The Afghanistan National Development Strategy (ANDS) and the national legal frameworks have contributed to the implementation of the ICESCR.³³ The ANDS requires the Government of Afghanistan to strengthen its capacity to comply with and report on its human rights treaty obligations.³⁴ However, Afghanistan's track record in reporting to the ESCR and Human Rights Committees has not been very consistent. Although Afghanistan did submit its report to the ESCR Committee in 2001, the UN records show earlier reports have not been submitted.³⁵ In its 2001 report, the Afghan delegation also cited "turmoil, political struggle, security instability, lack of data and statistics."³⁶ In 2001, the Afghan Ministry of Justice, in its report to the ESCR Committee did claim that "major gains had been made in adopting laws to strengthen the framework for human rights in Afghanistan". The Afghanistan Independent Human Rights Commission (AIHRC), for example, was established and the Law on the Elimination of Violence against Women was adopted.³⁷ In its report to the ESCR Committee, the Ministry of Justice makes reference to article 75 of the Afghan Constitution which mandates the Government to devise and implement social, cultural, economic and technological development.³⁸ It also makes reference to the ANDS, and the six sectors under the Strategy which are relevant to the ICESCR, namely infrastructure and natural resource, education, health, agriculture and rural development and social protection.³⁹

Despite progress at the policy, institutional and legislative levels, the human rights agenda in Afghanistan is at a "critical crossroads"⁴⁰ and Afghanistan still faces challenges to fulfil ESCR.⁴¹ There are signs that the overall situation of human rights is worsening. This includes flawed appointment process to the AIHRC, rising civilian casualties in the armed conflict and weakening women's rights.⁴² In addition, the Government and the international community's commitment and attention to the human rights agenda are weakening and that

³¹ Ahmad and others, above n 26, at 242.

³² At 242.

³³ United Nations *Second to fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant* (Afghanistan E/C12/AFG/2-4, 2007) E/C12/AFG/2-4 at 8.

³⁴ At 8.

³⁵ United Nations, Committee On Economic, Social And Cultural Rights *Report On The Twenty-Second, Twenty-Third And Twenty-Fourth Sessions* (Economic and Social Council, Annex 1, 2001) E/C12/2000/21 at 110.

³⁶ United Nations, above n 33, at 8.

³⁷ At 13.

³⁸ At 8.

³⁹ At 8.

⁴⁰ Office of the United Nations High Commission for Human Rights (OHCHR) *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights* (2013) at 15.

⁴¹ At 9.

⁴² At 15.

the overall situation of human rights is deteriorating. Appropriately, the ESCR Committee has been understanding of the challenges given the fact the country has been ravaged by decades of war and, therefore, has “felt a bit awkward holding Afghanistan accountable under the ICESCR”⁴³. However, the Committee has stated Afghanistan did not reflect accurately the status of persons with disability because Afghanistan characterised disabled people as “needing charity rather than people who have rights to opportunities to lead full lives”.⁴⁴ The Committee on ESCR has also blamed Afghanistan “for not being able to integrate such groups into mainstream society”.⁴⁵

2.5. National Solidarity Programme

The NSP has almost national coverage and is facilitated by 34 national and international Non-Governmental Organisations (NGOs) under the leadership of the Ministry of Rural Rehabilitation and Development (MRRD). The NSP is an integral part of the plan to realise the overall Afghanistan National Development Strategy, which helps realise Afghanistan’s commitment towards its Millennium Development Goals.

The NSP was established by the MRRD in 2003 to “develop the ability of Afghan communities to identify, plan, manage, implement and monitor” their own development projects.⁴⁶ The NSP has a total budget of under three billion USD until September 2016.⁴⁷ The NSP works in all of the 34 provinces of Afghanistan, has projects in 361 districts and has financed more than 80,000 development projects.⁴⁸ However, extreme insecurity has not allowed the programme to cover 15 percent of the country.⁴⁹ Since the NSP is a community driven development programme, it prides itself in having communities as right holders rather than beneficiaries in its implementation.⁵⁰

The programme is centred around two interventions at the village level. First, the NSP has created a gender-balanced and inclusive Community Development Councils (CDCs) through a secret ballot. Secondly, the NSP disburses block grants, valued at \$200 per household, to help fund projects at the village level, which are selected, designed, implemented and

⁴³ United Nations *Committee on Economic, Social and Cultural Rights considers Report of Afghanistan* (2010) Relief Web Net E/C12/AFG/2-4 <reliefweb.int/report/afghanistan/committee-economic-social-and-cultural-rights-considers-report-afghanistan>.

⁴⁴ Relief Web, above n 43.

⁴⁵ Relief Web, above n 43.

⁴⁶ Islamic Republic of Afghanistan, Ministry of Rural Rehabilitation and Rural Development (MRRD), *The National Solidarity Programme (NSP)* <<http://www.nspafghanistan.org/default.aspx?sel=109>>.

⁴⁷ Andrew Beath, Fotini Christia, Ruben Enikolopov *Randomized impact evaluation of Afghanistan's national solidarity programme* (Washington DC, World Bank, July 2013) <<http://documents.worldbank.org/curated/en/2013/07/18273450/randomized-impact-evaluation-afghanistans-national-solidarity-programme>> at 2.

⁴⁸ At 2.

⁴⁹ As per interviews with senior officials with the Ministry of Rural Rehabilitation and Development (MRRD) Interview with Abdul Rahman Ayubi, former Executive Director of the NSP (the Author, Kabul, 22 August 2015).

⁵⁰ Yemak Reza, Yemak, Gan Fun Chen Delice *Celebrating ten years of the National Solidarity Program (NSP): a glimpse of the rural development story in Afghanistan* (Washington DC, World Bank 2013) <documents.worldbank.org/curated/en/2013/01/18427935/celebrating-ten-years-national-solidarity-program-nsp-glimpse-rural-development-story-afghanistan> at 8.

monitored by the communities.⁵¹ Since the establishment of the programme, the NSP has established around 37,000 democratically elected CDCs across the country.⁵²

The CDCs have become key development actors themselves as the government's outreach does not go beyond the main cities and towns due to the prevailing insecurity. The CDCs and the Facilitating Partners (FPs) have helped the NSP to serve as the face of the government to the rural people. This is a significant change from the past as previously rural communities, in particular women, never benefited from government-provided services.⁵³

The NSP also promotes good governance at the local level to help empower rural communities to make decisions to improve their living standards.⁵⁴ The NSP has provided rural communities with an historic opportunity where men, women and people from different communities, including the most marginalised and vulnerable, participate in elections for CDCs. In order to ensure widespread and grassroots participation, the NSP requires at least 65 percent of community members' participation in pre-CDC election mobilisation processes and at least 80 percent of mobilised communities should take part in elections.⁵⁵

One of the most unique and democratic aspects of the NSP is its emphasis on meaningful and inclusive participation of communities in development process. As per the Operational Manual of the NSP, there should be three community wide meetings to ensure there is equal participation from community members, which is also representative of the community makeup.⁵⁶ These community wide meetings are designed to ensure sufficient awareness about the objectives of the NSP and its block grant.⁵⁷ The block grant is an entitlement of a CDC where each CDC can receive up to a maximum of USD 60,000, depending on the number of families in a CDC.⁵⁸

The Programme has theoretically given women a voice in local governance,⁵⁹ particularly in the executive positions of CDCs where it is mandatory to have two male and two female executive members.⁶⁰ These executive positions are designed to enable women to more effectively represent other women not only at the project consultation level but also at the executive decision making level. The Operational Manual of the NSP requires meaningful female representation. For example, it requires at least 35 percent of CDC members

⁵¹ Beath, Christia, Enikolopov, above n 47, at 2.

⁵² At 2.

⁵³ Yemak, Fun and Delice, above n 50, at 8.

⁵⁴ The NSP, above n 46.

⁵⁵ The NSP, above n 46.

⁵⁶ The NSP, above n 46.

⁵⁷ The NSP, above n 46.

⁵⁸ The NSP, above n 46.

⁵⁹ Yemak, Fun and Delice, above n 50, at 8.

⁶⁰ Islamic Republic of Afghanistan, Ministry of Rural Rehabilitation and Rural Development (MRRD), The Operational Manual VII, The National Solidarity Programme (2012) <<http://www.nspafghanistan.org/default.aspx?sel=16>>at 12.

nationally to be women while also making women's participation mandatory throughout the project cycle.⁶¹

Once elections are conducted, communities prepare, and then finalise, their Community Development Plans (CDPs) which prioritise their development needs. The NSP Logical Framework requires a minimum of 70 percent women, of the total number of female members, to participate in the CDP.⁶² There is a vote on setting priorities because at times priorities set by men may differ from those of women. If priorities set by women are different than those set by men, the Operational Manual requires special care to be exercised to ensure the priorities set by women are included in the final CDP.⁶³

Another unique aspect of the NSP is that the design of the Programme promotes communities contributing their own resources to their development projects⁶⁴ which in turn gives a stronger sense of ownership to the communities and ultimately contributes to the sustainability of their project. Over 53,000 of these sub-projects, to the tune of \$809 million, have already been completed. Communities have contributed over \$160 million, i.e. over 13 percent, towards the project costs, in cash, kind and/or labor.⁶⁵

In order to empower communities, the NSP has had a special focus on building capacities to enable members to conduct social audit and also hold elected members of the CDCs accountable. While providing the different training under its community empowerment package, the NSP also mandates that a minimum of 50 percent of the trainees should be women.⁶⁶ The training is diverse and includes subjects such as community participatory monitoring, procurement and accounting, conflict resolution, project cycle management and financial management.

As a whole, the NSP plays a key role in enabling communities to know more about their rights and raise awareness by having regular discussions with duty bearers on how they can address their basic needs. A team of four non-CDC community members are elected to form the community participatory monitoring team. The team is responsible to monitor the activities of CDC with regard to NSP implementation especially related to the use of the block grant and the subproject implementation.

Extensive consultation, inclusive participation, elections and capacity building to empower communities are not the only features of the NSP design. The NSP has considerable focus on transparency and accountability. The NSP promotes transparency and accountability in its whole project design and implementation.⁶⁷ In order to ensure funds have been spent in a

⁶¹ At 13.

⁶² At 12.

⁶³ At 20.

⁶⁴ The NSP, above n 46.

⁶⁵ Yemak, Fun and Delice, above n 50, at 8.

⁶⁶ The Operational Manual VII, above n 60, at 32.

⁶⁷ At 5.

transparent and accountable way, the NSP has a strong social audit whereby a meeting of the community discusses the use of NSP funds against approved projects and against actual expenditure,⁶⁸ which is all in line with the NSP's procurement and accounting regulations. The community participatory monitoring functions as an additional layer "to monitor the activities of CDCs, particularly in relation to budget and project implementation".⁶⁹ Also, the CPM is an effective way to enable communities to ask questions from the elected members of CDCs and seek answers about quality of the projects and expenses incurred.

2.6. Projects under the NSP

Given the protracted war and civil strife in Afghanistan since the 1980s, when the NSP commenced in 2003, there was virtually no necessary infrastructure or basic rights in rural areas, where 75 percent of the Afghan population live.⁷⁰ The NSP has provided extensive infrastructure and basic rights to the majority of the communities across the country to ensure these communities have access to their basic rights. For instance, so far, the NSP has financed 86,022 sub-projects.⁷¹ These projects include roads (23,259), water supply and sanitation (20,825), irrigation projects (18,611), supply of power (8,174), creating livelihood opportunities (2,559), constructing schools (6,711) and other miscellaneous projects (5,883).⁷² These projects have had a tremendously positive impact in the lives of the communities that make up the 49,075 CDCs.⁷³

2.7. Jobs created under the NSP

The NSP has had a tangible economic impact on the broader economic outcomes in short-term due to its 'stimulus effect' and by injecting block grants.⁷⁴ In the mid-term, the NSP has also created thousands of jobs in village infrastructure projects.⁷⁵ The NSP projects have been very labour intensive and, therefore, communities have financially benefited. For example, the projects require preparation and transportation of stone, gravel, sand and soil. These are carried out by labour force. While the NSP does not create permanent and full time jobs, since its inception, it has created more than 49 million labour days through these infrastructure projects.⁷⁶

⁶⁸ At 40.

⁶⁹ At 40.

⁷⁰ Report No: 80177-AF The World Bank, *Afghanistan Reconstruction Trust Fund Project Appraisal Document* (March 25, 2014) Afghanistan Reconstruction Trust Fund <http://www.artf.af/images/uploads/PAD_for_KMDP.pdf> at 19.

⁷¹ The National Solidarity Program *Monthly Program Report* (21 April to 21 May 2015). <<http://www.nspafghanistan.org/default.aspx?sel=30>> at 4.

⁷² At 4.

⁷³ At 4.

⁷⁴ Beath, Christia, Enikolopov, above n 47, at 21.

⁷⁵ At 21.

⁷⁶ The World Bank *Assessment of Strategic Issues and Recommendations for Future Directions Technical Assistance Paper National Solidarity Program* (2015 <http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/SAR/2015/06/02/090224b082eea8e5/2_0/Rendered/PDF/NSP0Strategic0Directi ons0TA0Paper.pdf> at 34.

Evaluation of the NSP has documented the wider socio-economic impact of, the Programme, illustrating measurable progress since its inception in 2003. For example, the NSP has improved access to clean drinking water, energy, education and health care.⁷⁷ The impact evaluation has also reported some positive impact of the NSP on the economic welfare of rural villages, notably the creation of 49 million days.⁷⁸ Although the impact evaluation has concluded that the NSP has had a significant impact on Afghanistan's rural economy,⁷⁹ given the extensive needs on the ground, a more lasting intervention is required to ensure the realisation of basic rights for the long- term across the country.

2.8. The Citizens' Charter – a continuation of the National Solidarity Programme and other National Priority Programmes?

The NSP, undoubtedly, has laid the foundation for any development work across virtually the whole of Afghanistan. The sector Ministries are required to use CDCs as the gateway for both development and governance activities.⁸⁰ Since early 2015, the Government has been working on what is known as the 'Citizens' Charter' "an initiative that would guarantee a minimum of core services [which can be regarded as rights] to all Afghans, using CDCs as the primary vehicle for service delivery".⁸¹ The Charter is a package of basic rights to ensure citizens' development rights, representing the resolve of the Afghan government to "provide universal access to a core set of basic services" and is expected to replace the rights provided under the National Solidarity Programme and other National Priority Programmes.⁸² The Charter will serve as a "compact between the government and the citizens, intended to raise their living standards and productivity".⁸³ However, the government has also admitted by now that it will incrementally provide these so called basic services [which can be regarded as rights] to its population from early 2017, initially covering 30 percent while the other 70 percent will be covered in the next 7 years.⁸⁴

2.9. Conclusion

The NSP is the first national programme that also represents 'firsts' for so many things. The fact it covers 85 percent of the country is a first. The fact elections were introduced to the country at the village level is a first. The fact women were given equal roles at the executive level is a first. The fact NSP allowed millions of ordinary citizens to prioritise their development needs in a participatory manner is a first. The fact the programme gives control

⁷⁷ The World Bank Report No: 84660-AF *Afghanistan Reconstruction Trust Fund Project Appraisal Document* Afghanistan Reconstruction Trust Fund (2014) < http://www.artf.af/images/uploads/PAD_for_CASA_CSP.pdf> at 37.

⁷⁸ At 38.

⁷⁹ At 38.

⁸⁰ At 4.

⁸¹ The World Bank, *Technical Assistance Paper National Solidarity Program*, above n 56, at 7.

⁸² Islamic Republic of Afghanistan, Ministry of Foreign Affairs, *Afghanistan National Development Strategy* < <http://mfa.gov.af/>>; Islamic Republic of Afghanistan, Ministry of Rural Rehabilitation and Development, *General Procurement Notice* (April, 2016) < <http://mrrd.gov.af/en>>.

⁸³ At 83.

⁸⁴ At 83.

to communities over their resources is a first. It is also the first time the majority of people in rural areas have received their basic rights, courtesy of the international community.

After the events of 9/11 in the US, the international community has shown commitment to the so-called new-born Afghanistan. The NSP is a manifestation of this commitment from the international community to help Afghan government realise its MDGs. The Citizens' Charter will, it seems, be another firm step in that direction. Despite all these significant firsts, this research will explore the question whether the implementation of the NSP meets the core elements of the human rights-based approach to development. In order to answer this question, I conducted interviews with different individuals who have been involved with design, implementation and monitoring of the NSP.

Chapter three

Development on the ground in Afghanistan

This Chapter explores perspectives of participants on the design and implementation of the National Solidarity Programme (NSP) in Afghanistan. The Chapter attempts to find views of the participants whether the NSP as the flagship development programme of the government of the Islamic Republic of Afghanistan meets the principles of a human rights-based approach to development (HRBA).

It is pertinent to note, at the outset, that I was able to interview staff from both the government and Facilitating Partners. However, as an international staff based in Kabul, I had certain security limitations to visit communities and villages. As a result, limitations on my movement has impacted the possibility of access to a wider range of community views. Insecurity will be discussed in more detail as part of challenges under Chapter Four.

3.1 Application of the human rights-based approach under the National Solidarity Programme in Afghanistan

As mentioned earlier, this thesis uses a combination of sources including desk research, 15 interviews and five Focus Group Discussions (FGDs) with individuals working and benefiting from the National Solidarity Programme (NSP) in 15 provinces to ascertain the situation on the ground. The focus of the fieldwork was on three different groups: government staff and advisors of the NSP; staff working with the Facilitating Partners (FPs) of the NSP; and elected and ordinary members of the Community Development Councils (CDCs). While the NSP staff gave consent to mention their names, the details for FPs' staff and community members remain confidential. Instead, pseudonyms are used for FPs' staff and community members.

The fieldwork resulted in almost 400 minutes of recorded interviews which I have also transcribed. Informed consent was received prior to conducting each interview.

As mentioned in the Introduction to the thesis, in order to examine the application of the human rights-based approach to development in the NSP, I have used a qualitative method, namely purposive sampling which groups participants according to their knowledge and role to a particular research question.

The interviews were structured around the five elements of the HRBA discussed in Chapter One. These are the NSP realising rights, participation, empowerment, non-discrimination and accountability. The same structure is preserved for the purposes of this chapter.

3.1.1 Communities see the National Solidarity Programme as realising rights

Realisation of rights as per the human rights framework is the first of five elements under the HRBA. Given its theoretical nature, the question whether the NSP is seen as delivering aid or realising basic rights produced interesting perspectives and responses. Although views differed on whether the government can in reality provide such rights, there was relative consensus that the government has an obligation to provide basic rights to its people. The NSP, therefore, provides the platform for realising such rights.

The design of the NSP has an inherently equitable nature, “qualifying each rural family” for an amount of US \$200, per phase, known as the block grant.¹ Communities see the block grant as their entitlement to fund their basic rights as per their development priorities, in a participatory manner.² While the design of the NSP illustrates how it aspires to realise every household’s basic rights to water, education, health or jobs, albeit short term, many of the answers indicated communities’ understanding of the NSP realising rights depended on a number of variables. These included awareness, quality of mobilisation, top down approach, and maturity of CDCs.³

Raising awareness about the objectives of the NSP is a contractual responsibility of the Facilitating Partners (FPs) whereby FPs are required to ensure communities understand the Programme’s objectives, under which all households within a community receive block grants.⁴ FPs are required to ensure communities fully understand their entitlements and that communities are fully aware of their rights and responsibilities as outlined in the Operational Manual of the NSP.⁵ While FPs agree it is their contractual responsibility, Interviewee 4, who has more than 10 years of direct work experience with the NSP, agreed that the understanding of the NSP realising rights depended on how the FPs mobilised communities and how FPs delivered this message to the communities.⁶ Also, finding competent staff is a challenge which affects the quality of mobilisation. Therefore, appropriate awareness cannot be raised in the absence of qualified staff.⁷

¹ Interview with Abdul Rahman Ayubi, former Executive Director of the NSP (the Author, Kabul, 22 August 2015); Interview with Rasoul Rasouli, Acting Executive Director of the NSP (the Author, Kabul, 7 July 2015).

² Interview with Jovitta Thomas, Senior Operations Advisor to the NSP (the Author, Kabul, 15 November 2015); Interviewee 8 (the Author, Kabul, 3 September 2015); Interviewee 3 (the Author, Faizabad district, Badakhshan Province, 15 September 2015); Interviewee 7 (the Author, Badakhshan Province, 10 August 2015); Interviewee 10 (the Author, Ghor Province, 15 July 2015).

³ Interview with Abdul Rahman Ayubi, above n 1; Interviewee 10, above n 2; Interviewee 8, above n 2; Interviewee 4 (the Author, Kabul, 2 July 2015); Interviewee 3, above n 2.

⁴ Interview with Rasoul Rasouli, above n 1; Interview with Brigitta Bode, Planning and Policy Advisor of the NSP (the Author, Kabul, 16 August 2015).

⁵ Interview with Rasoul Rasouli, above n 1.

⁶ Interviewee 4, above n 3.

⁷ Interviewee 4, above n 3.

Jovitta Thomas, who has been with the Programme since 2003 in different capacities, opined that understanding of the NSP may “vary widely from community to community”.⁸ There could be various contributing factors, such as government representation, proximity of the community to the district centres, the phase of the NSP and whether the FP has a needs-based or rights-based approach.⁹ In principle, the NSP arguably realises rights as communities receive a fixed amount under each phase.¹⁰ However, the problem has partly been a top down approach in designing the NSP, and without adequate involvement of the communities in the design phase, some communities may not necessarily see the NSP realising rights.¹¹

While the majority of the interviewees were of the view that NSP delivered on its commitments to realise rights,¹² everyone has not necessarily been familiarised to the concepts of project participants, right holders and duty bearers. For instance, in some CDCs, staff of the Facilitating Partners were not even using the word right holder or project participant.¹³ Instead, they were using “the concept of beneficiaries although they are now gradually shifting to project participants and rights’ holders”.¹⁴ According to one FP staff, efforts were being made with the team and community members to shift to the rights terminology and work with communities in a way that CDCs see the delivery under the project as their rights and not just aid.¹⁵

Awareness about recognition of rights under the NSP was not accurate among some of the community members interviewed as part of the Focus Group Discussions (FGDs).¹⁶ For instance, female project participants in Badakhshan province said that the NSP projects “first came from the God and then they came from the [Facilitating Partner] that has been helping us”.¹⁷ Almost all of the women sitting in the room repeated in one voice that they do not think the NSP [realises] their rights. The female Social Organiser¹⁸ who has worked under the NSP cited “awareness as a key factor for more women knowing that the NSP realised rights for both men and women”.¹⁹

⁸ Interview with Jovitta Thomas, above n 2.

⁹ Interview with Jovitta Thomas, above n 2.

¹⁰ Interview with Jovitta Thomas, above n 2.

¹¹ Interview with Jovitta Thomas, above n 2.

¹² Interviewee 4, above n 3; Interview with Brigitta Bode, above n 4; Interviewee 12 (the Author, Kabul Afghanistan, 2 January 2016); Interview with Abdul Rahman Ayubi, above n 1; Interview with Rasoul Rasouli, above n 1; Interviewee 1 (the Author, Kabul, 9 June 2015); Interviewee 7, above n 2.

¹³ Interviewee 5 (the Author, Faizabad, Badakhshan Province, 13 July 2015).

¹⁴ Interviewee 5, above n 13.

¹⁵ Interviewee 5, above n 13.

¹⁶ It is pertinent to note that there are around 37,000 CDCs. While the number of interviewees are fairly representative in terms of FPs and government officials, the number of CDCs interviewed are no way near to a representative view given a number of facts, including conservative nature of communities, security, levels of education and socio-economic situation.

¹⁷ Focus Group Discussion 1/female (the Author, Kishim District Badakhshan Province, 10 August 2015).

¹⁸ Given strict local traditions for women not to interact with male staff, the NSP incentivises female employment as having female staff would create an environment for women to come out and participate in development activities. Where FPs recruit Female Social Organisers, each FP gets an additional bonus payment too.

¹⁹ Interviewee 3, above n 2.

In contrast, awareness about the NSP among male CDC members in a more secure environment was different. For example, the Head of one of the CDCs in Argo district of Badakhshan said that the NSP realises the rights of the communities because it has national coverage and not only the NSP realises rights to members of his CDC but to all communities across Afghanistan.²⁰ The Deputy Head of the CDC was equally clear, stating that “this has happened to the whole of the country so it must be our right”.²¹ Moreover, the Treasurer of the CDC claimed that “although the money comes from the international community, for which they are thankful, it is their right to have access to basic services”.²² The other members of the community who were accompanying the Treasurer unanimously confirmed, saying “the NSP realises their rights”.²³ A similar position was expressed by CDCs from two districts in Ghor province, who were on a visit to the provincial capital, that the provision of projects under the NSP is the government’s responsibility to ensure basic rights to the nation.²⁴

Although the sampling with communities was small, the community members who were interviewed do see the NSP realising rights because “the programme gives control over resources to the communities”.²⁵ Communities also see the NSP realising rights because they provide community in kind and cash contributions and subsequently take care of Operations and Maintenance of NSP projects.²⁶

This can be seen on the ground too. There are 87,000 projects across Afghanistan and some of these projects are in very insecure areas. Yet, these projects are still functioning because communities have a strong ownership in the projects, consider them as community assets and everyone is benefiting from them.²⁷ Similarly, four interviewees, who have more than 30 years of combined work experience with the NSP in one capacity or another, argued that communities’ in kind contributions, role in project implementation, oversight and Operations and Maintenance of their projects strongly indicated the NSP realises their rights.²⁸ Transfer of funds to the CDCs’ bank accounts and the CDCs’ elected members being the signatories with the bank and the provincial authorities further contribute to the understanding that the NSP realises rights.²⁹

According to Interviewee 12, who has worked on the design of the NSP and facilitates the NSP in 10 provinces, a large number of CDCs think the NSP realises their rights for two

²⁰ Focus Group Discussion 2 (the Author, Argo District, Badakhshan Province, 10 August 2015).

²¹ Focus Group Discussion 2, above n 20.

²² Focus Group Discussion 3 (the Author, Argo District, Badakhshan Province, 15 September 2015).

²³ Focus Group Discussion 3, above n 22.

²⁴ Focus Group Discussion 4 (the Author, Shahrak District, Ghor Province, 13 October 2015); Focus Group Discussion 5 (the Author, Dolaina District, Ghor Province, 13 October 2015)

²⁵ Interview with Abdul Rahman Ayubi, above n 1.

²⁶ Interview with Abdul Rahman Ayubi, above n 1; Interviewee 3, above n 2.

²⁷ Interview with Abdul Rahman Ayubi, above n 1.

²⁸ Interview with Abdul Rahman Ayubi, above n 1; Interviewee 6 (the Author, Kabul, 11 August 2015); Interviewee 7, above n 2; Interviewee 10, above n 2.

²⁹ Interview with Abdul Rahman Ayubi, above n 1; Interviewee 6, above n 28; Interviewee 7, above n 2; Interviewee 10, above n 2.

reasons.³⁰ First, they think the government has a responsibility to realise their basic rights and secondly, the CDCs have ownership of the process.³¹ The ownership of communities can be seen in the process while deciding on their priorities as well as the communities' role in design and implementing their projects.³²

Realistically speaking, argued Ayubi – the former Executive Director of the NSP, “the minimum what a post-conflict country like Afghanistan should provide to its citizens is basic services”.³³ The government intends to build on the NSP and enact the Citizens' Charter, which is a guarantee of basic rights.³⁴ While the NSP leadership claimed the NSP has provided the basis for the Citizens' Charter to provide access to education, health, irrigation, water management, including drinking water, improved farming technology and job opportunities,³⁵ there was also a word of caution about availability of resources. The Citizens' Charter is “a big promise which would require proper strategy and money”.³⁶ At the time of writing this thesis, the government is finalising the Citizens' Charter, in close consultation with its international partners and may start implementation towards November 2016.

3.1.2 Participation

Participation is the second key element of a human rights-based approach. Participation is also a key element of NSP and appears to be widely exercised in practice. Given the significance of participation at the grassroots level, the NSP processes heavily focus on participation. Yet, arguably, the Afghan context poses serious challenges for meaningful and inclusive participation where communities from all walks of life have a voice in the decision making process to shape their development priorities.

Views from the Facilitating Partners (FPs) indicated that both context and awareness are key to meaningful and inclusive participation. For instance, in some districts where tribal structures are dominant, tribal elders did not initially allow women to take part in the development and decision making process.³⁷ After the introduction of the NSP to their communities and establishment of CDCs on the ground, the Social Organisers contacted influential people and members of CDCs, who were against this process. According to these interviewees, once the objectives of the NSP were explained to them, the leaders gradually

³⁰ Interviewee 12, above n 12.

³¹ Interviewee 12, above n 12.

³² Interviewee 6, above n 28; Interviewee 7, above n 2; Interviewee 10, above n 2.

³³ Interview with Abdul Rahman Ayubi, above n 1.

³⁴ Interview with Abdul Rahman Ayubi, above n 1.

³⁵ Interview with Abdul Rahman Ayubi, above n 1.

³⁶ Interview with Abdul Rahman Ayubi, above n 1.

³⁷ Interviewee 3, above n 2; Interviewee 8, above n 2.

understood the NSP. According to Bode, once the NSP was understood as a community driven development programme, it also helped with increased participation.³⁸

The quality of facilitation and participatory empowerment approaches by FPs contribute to communities' participation in different stages including decision-making processes.³⁹ To this effect, the NSP requires genuine participation on the ground which starts with community mobilisation, where communities are given information about the different aspects of the NSP affecting their lives.⁴⁰ Communities are involved in elections and subsequent preparation of Community Development Plans (CDPs).⁴¹ However, before the CDPs are finalised, a series of community wide consultations take place to list all the issues in their surrounding areas and villages.⁴² Thus, communities are involved right from the start to identify their collective needs, suitable projects, and locations.⁴³ Once CDPs are in place and communities have listed their development priorities, CDCs' attention turns to implementation⁴⁴ during which CDCs have full and actual participation in the design, implementation and monitoring of their sub-projects.⁴⁵ In this process, FPs only play a "catalyst role" to ensure communities are going in the right direction and are actively participating.⁴⁶

The platform for participation is not only at the community level, however. The elected members take part in district and provincial level meetings to discuss issues surrounding their CDCs.⁴⁷ The elected members of CDCs come to Kabul to take part in the national conferences involving all the CDCs from across the country and taking place once every three years.⁴⁸ The attendance of the elected CDC members from across the country is seen as a "good indication of their active participation to advocate for their issues at the national level" in an effort to influence policies and laws.⁴⁹ Exposure visits to district and provincial centres and Kabul appear to have allowed women to participate in a bigger forum, which has positively contributed towards their confidence and gradual empowerment.⁵⁰ For example, "women are able to meet and exchange their views in meetings with other women" and this is seen as an area where an increasing number of women are being empowered.⁵¹ Nonetheless, such trips and exposure visits are rare and infrequent.

³⁸ Interview with Brigitta Bode, above n 4; Interview with Abdul Rahman Ayubi, above n 1.

³⁹ Interview with Abdul Rahman Ayubi, above n 1.

⁴⁰ Interviewee 6, above n 28; Interviewee 7, above n 2; Interviewee 4, above n 3.

⁴¹ Interviewee 4, above n 3; Interview with Rasoul Rasouli, above n 1; Interviewee 1, above n 12; Interviewee 6, above n 28.

⁴² Interviewee 4, above n 3.

⁴³ Interviewee 1, above n 12.

⁴⁴ Interviewee 4, above n 3.

⁴⁵ Interviewee 1, above n 12; Interviewee 6, above n 28; Interviewee 7, above n 2; Interview with Rasoul Rasouli, above n 1.

⁴⁶ Interviewee 4, above n 3.

⁴⁷ Interview with Abdul Rahman Ayubi, above n 1.

⁴⁸ Interview with Abdul Rahman Ayubi, above n 1.

⁴⁹ Interview with Abdul Rahman Ayubi, above n 1.

⁵⁰ Interviewee 1, above n 12; Interviewee 3, above n 2.

⁵¹ Interviewee 3, above n 2.

While participation of both community members and, more so, elected members is strongly mandated by the Operational Manual, there are very real challenges on the ground. Low literacy rates is one big issue and, therefore, it was not surprising when Thomas cited “text heavy guidelines as a barrier to participation”.⁵² Also, ordinary members of CDCs lack influence in the decision making process.⁵³ For instance, there are CDCs where “the elected members are directly involved in taking decisions” without much consultation with ordinary members.⁵⁴ However, this was only attributed to the *Arbabs*⁵⁵ (the power brokers) who often do not want to allow ordinary members to be involved in decision making process.⁵⁶ Nonetheless, the elected members of CDC had a different take in Ghor, arguing that while they are “informing other community members” about the projects, they also “discuss with them their needs and how to prioritise those needs”⁵⁷.

Cultural tradition was cited as an obstacle to female participation.⁵⁸ Often, participation is dominated by men and rarely involves meaningful participation from women. One such tradition is men’s reluctance and at times resistance to allow women to come out and interact with other men or even women.⁵⁹ Also, women have severe mobility restrictions imposed by local traditions. They cannot travel far from their houses and are unable to participate in any other activity which is planned beyond their villages. Elected CDC members rarely seek inputs from these women in decision-making.⁶⁰ For example, if a project is proposed by men, both men and women would benefit but only men make the decisions and women become the incidental beneficiaries.⁶¹ At the village level, CDCs confirmed that women are “consulted through men” and projects are “selected through the direct or indirect involvement of women”.⁶² Male members of two CDCs also proudly admitted that the “projects selected by men are highly appreciated by women”.⁶³

In order to enable female community members, and even at times elected female CDC members, the NSP has incentivised recruitment of female Social Organisers, paving the way for separate meetings for male and female community members. This practice is common in almost all provinces. For instance, CDCs in Badakhshan, Ghor, Samangan, Faryab, Kandahar and Panjshir provinces talk to women through other women, tribal elders or there

⁵² Interview with Jovitta Thomas, above n 2.

⁵³ Interviewee 10, above n 2.

⁵⁴ Interviewee 10, above n 2.

⁵⁵ In Ghor, there was the royal family and since then, there is the system that in each village, there is one *Arbab* who is the authorised person and when he makes a decision, this cannot be overturned. Also, for some social issues, the only person who is authorised and who orders people what to do is the *Arbab*. These are only men *Arbab* and there are no women.

⁵⁶ Interviewee 10, above n 2.

⁵⁷ Focus Group Discussion 4, above n 24.

⁵⁸ Interviewee 1, above n 12; Interviewee 10, above n 2.

⁵⁹ Interviewee 1, above n 12.

⁶⁰ Interviewee 10, above n 2.

⁶¹ Interviewee 3, above n 2.

⁶² Focus Group Discussion 4, above n 24; Focus Group Discussion 5, above n 24.

⁶³ Focus Group Discussion 4, above n 24; Focus Group Discussion 5, above n 24.

can be meetings in separate rooms where women can hear what men talk about.⁶⁴ The result of these separate meetings is then communicated to the male executive members of CDCs through the female social organizer, the female elected member or a male family member of the female elected member, who is known as *Mahram*.⁶⁵

In contrast, joint meetings are possible in a limited number of districts with less conservative traditions.⁶⁶ For example, female participation in the two districts of Wardak province was around 95 percent of the total participants.⁶⁷ Similarly, female participation in the more secure and less conservative province of Bamyan is equally high.⁶⁸ In contrast, female participation in another district of Wardak province was around 20 percent of all of participants in a more conservative CDC.⁶⁹ Such varying levels of female participation provide important perspective on the relevance of participation and good security, flexibility and attitudes of the communities with regard to women.⁷⁰ While joint meetings are important for free and active participation for women so that they can influence their development priorities, joint meetings are rare simply because they do not fit with the rural Afghan traditions. Hence, separate meetings become the most effective platform for female participation.

Separate meetings, which are culturally valid but not necessarily consistent with the principles of the human rights-based approach, allow for some kind of decision to be arrived at because it is more effective than bringing both men and women together in one room where “many things would not surface in the final decision making process”.⁷¹ This is because local conservative traditions do not allow women to express their views in the presence of men who are not their family members. Therefore, joint meetings can be counterproductive. For example, when there has been an attempt to have joint meetings, women hardly speak and fail to propose what they need. Instead they remain silent whereas men speak up and their preferred projects are selected.⁷²

Taking conservative local traditions into account, both interviewees 4 and 12 argued that separate meetings are a good idea because women can, at least indirectly, participate.⁷³ However, women’s role in the decision making is weak and whatever men say, “women would simply accept and could not act independently”.⁷⁴ Also, there is hardly any direct interaction between men and women. The role of women in project selection, therefore,

⁶⁴ Interviewee 7, above n 2; Interviewee 10, above n 2; Interviewee 9 (the Author, Kabul, 29 June 2015); Interviewee 3, above n 268; Interviewee 8, above n 2; Interviewee 12, above n 12.

⁶⁵ Interviewee 8, above n 2.

⁶⁶ Interviewee 6, above n 28; Interviewee 12, above n 12.

⁶⁷ Interviewee 6, above n 28; Interviewee 1, above n 12; Interviewee 4, above n 3.

⁶⁸ Interviewee 12, above n 12; Interviewee 1, above n 12; Interviewee 4, above n 3.

⁶⁹ Interviewee 6, above n 28.

⁷⁰ Interviewee 6, above n 28; Interviewee 7, above n 2.

⁷¹ Interviewee 9, above n 64.

⁷² Interviewee 9, above n 64.

⁷³ Interviewee 12, above n 12; Interviewee 1, above n 12; Interviewee 4, above n 3.

⁷⁴ Interviewee 3, above n 2.

becomes very weak and where “women want to have a carpet weaving or maternity clinic, men would go for projects such as roads and schools”.⁷⁵ This illustrates the very nature of the problem as largely men make decisions affecting women and other marginalised groups. Where women have a different preference, men may disagree or ignore their choices.⁷⁶

Bode, on the other hand, cautioned that it is necessary to be realistic in a male dominated society where influential men make decisions.⁷⁷ Bode was skeptical about active female participation in the Afghan context, arguing the main focus of the NSP had been “to get the infrastructure to the village in a transparent manner and that the infrastructure was solid and lasted for a long time”.⁷⁸ Bode also admitted to not being concerned about “leaving some people out” and that ensuring participation of women was a responsibility of the Facilitating Partners (FPs).⁷⁹ Bode, in fact, presents a realistic view of participation for women in Afghanistan because if progress of infrastructure work was conditional upon female participation, not much progress would happen on the ground. This exposes the weaknesses of the human rights-based approach in a conservative and post conflict state.

While the former Executive Director of the NSP confirmed there is “no denying the rural population is very conservative” about female participation, tangible progress has happened for the first time in the history of Afghanistan despite all the odds.⁸⁰ Now, women have an opportunity they did not have ten years ago. They can benefit from development initiatives and in many cases they can take part in the discussions although the extent of their involvement, discussed in more detail in the next chapter, is highly debatable. For example, two seats are now reserved for women as part of the executive body of each CDC. Some NSP senior staff took the reserved seats for women in the executive body as a positive development, arguing this has increased female participation from “less than 20 percent to 43 percent” based on the data from internal reports which have been confirmed by external evaluators and reports.⁸¹ However, the Senior Operations Advisor to the NSP contrasted membership and participation, adding the increase to 43 percent needs to be contextualised as Afghanistan is a traditional and conservative country where participation, as understood in the West, may not work.⁸²

⁷⁵ Interviewee 3, above n 2.

⁷⁶ Interviewee 3, above n 2.

⁷⁷ Interview with Brigitta Bode, above n 4.

⁷⁸ Interview with Brigitta Bode, above n 4.

⁷⁹ Interview with Brigitta Bode, above n 4.

⁸⁰ Interview with Abdul Rahman Ayubi, above n 1.

⁸¹ According to the World Bank, female representation in local institutions increased by 38 percentage, as a result of the NSP. For more details, please see, *The World Bank Assessment of Strategic Issues and Recommendations for Future Directions Technical Assistance Paper National Solidarity Program* (2015 < http://www-wds.worldbank.org/external/default/WDSCContentServer/WDSP/SAR/2015/06/02/090224b082eea8e5/2_0/Rendered/PDF/NSP0Strategic0Directi0ns0TA0Paper.pdf> at 34.

⁸² Interview with Jovitta Thomas, above n 2.

3.1.2.1. Participation of persons with disability

In addition to the generally reported good levels of participation by men and some, albeit more limited, participation by women, there were some examples of the inclusion of persons with disabilities too. For example, in Faryab, a province in the north of the country, the most marginalised not only participated in the decision making process but they were also represented in the executive body.⁸³ In one community, a disabled person was an elected member of one of the CDCs and in addition to representing the whole of the community, he also represented persons with disabilities and is their voice.⁸⁴

However, such examples were rare and persons with disabilities often appear to be ignored and excluded when it comes to the decision-making process or how they benefit from the NSP. In other words, they do not have the same level of opportunities to lead full lives. Despite Afghanistan ratifying the UN Convention on the rights of persons with disability, disability friendly programming is not common within the NSP. In practice, disability considerations are missing from the design of infrastructure projects which do not take into account the needs of persons with disability. Although an elected member of one of the CDC stated that their CDC does make sure to include other family members of the disabled with their CDC so the family of the disabled person can benefit financially from the wages given against labour,⁸⁵ a lot of disabled people do not directly benefit financially from the NSP projects who should be entitled to the same benefits as other community members.⁸⁶ In addition, NSP projects generally lack disability ramps and facilities. That is why there is “little inclusion of persons with disabilities in the NSP in practice”.⁸⁷

3.1.3 Empowerment

Empowerment is the third element under the human rights-based approach. It is also at the heart of the NSP’s Operational Manual and implementation. Once rights are recognised and communities have meaningful and inclusive participation in deciding their development priorities, their capabilities are built and gradually communities know more about their basic rights. While empowerment is critical for the NSP, empowering communities in a war ravaged country, hit by ongoing insurgency, is a slow process. This process, nonetheless, begins with communities knowing about their rights and corresponding obligations of duty-bearers to improve their living standards and positively influence their future. In order to empower CDCs, the NSP delivers 12 training modules as part of its empowerment package to build communities’ capacity in a number of areas, including procurement, implementation, social audit, linkages with markets, donors and knowing the objectives of the NSP, among others.

⁸³ Interviewee 8, above n 2.

⁸⁴ Interviewee 8, above n 2.

⁸⁵ Focus Group Discussion 3, above n 22.

⁸⁶ Interviewee 9, above n 64.

⁸⁷ Interviewee 9, above n 64.

The NSP's training package is important as it is used as a tool to train other community members in wider meetings, and during prayer times where "key messages are shared so communities are aware of the objectives and expected results of the programme".⁸⁸ These training sessions have been successful as they have started to build capacity of communities.⁸⁹ For instance, when one interacts with them in their villages, "it appears as if these people have gone to university and have studied development" while the reality is "everything they have learnt is by doing" under the NSP.⁹⁰

While empowerment is a key intended impact of the NSP, empowerment also meant involving communities in the processes and "giving communities control over their resources".⁹¹ Such an approach empowers communities to "make their own decisions about their own development issues", which also can help that "there is no elite capture".⁹² As well as giving communities control over their resources, the social audit gives communities another opportunity to ask questions about where and how the funds have been spent during implementation.⁹³ A number of interviewees, including staff of the NSP and FPs, were of the view that this empowers communities.⁹⁴

However, Bode also defined empowerment in the sense that communities "stand up for their rights" and tell their leaders that they are "tired of them having all the development projects to "their side of the village".⁹⁵ According to Bode, where communities stand up for their rights and "refuse such things to happen again",⁹⁶ communities are able to not only participate in the decision making process but also shape decisions. If such empowerment did not take place, Bode feared the development infrastructure projects would go to the parts of the village that belonged to the powerful traditional leaders.⁹⁷ When this is the case, communities are not empowered.⁹⁸

Realistically speaking, it is impossible to expect communities to stand up to warlords and strongmen in an insecure environment, with very weak rule of law. Such a level of empowerment is too ambitious in a country like Afghanistan which has been plagued by decades of civil strife and absence of rule of law. Interviewees were of the view that the NSP has empowered CDCs when there is a comparison between the current phase and the previous phases because one can see a lot of positive changes. For instance, CDCs are able to manage their own procurement, locally implement their own micro hydro power projects,

⁸⁸ Interviewee 8, above n 2.

⁸⁹ Interview with Brigitta Bode, above n 4; Interview with Abdul Rahman Ayubi, above n 1.

⁹⁰ Interview with Abdul Rahman Ayubi, above n 1.

⁹¹ Interview with Abdul Rahman Ayubi, above n 1.

⁹² Interview with Abdul Rahman Ayubi, above n 1.

⁹³ Interviewee 6, above n 28; Interviewee 1, above n 12; Interview with Brigitta Bode, above n 4; Interview with Abdul Rahman Ayubi, above n 1.

⁹⁴ Interviewee 6, above n 28; Interviewee 1, above n 12; Interview with Brigitta Bode, above n 4; Interview with Abdul Rahman Ayubi, above n 1.

⁹⁵ Interview with Brigitta Bode, above n 4.

⁹⁶ Interview with Brigitta Bode, above n 4.

⁹⁷ Interview with Brigitta Bode, above n 4.

⁹⁸ Interview with Brigitta Bode, above n 4.

produce locally available power and manage their own finances.⁹⁹ CDCs' capacity has been enhanced in writing proposals to approach local donors, get funding for their emerging or existing unfunded development priorities and mobilise communities for development work in their communities.¹⁰⁰ CDCs also engage in re-elections every three years, a process which was unheard of at the beginning of the NSP, and which is crucial for the sustainability of CDCs so they are not entirely donor driven.

CDCs shared the sentiments about their increasing confidence and capacity to handle the affairs of the CDCs as they have gained more skills and knowledge. For instance, the Chair of one CDC said they are able to manage construction work for a range of projects by themselves and are able to attract increased funding for their water and other basic needs.¹⁰¹ As a result of the increased capacity, knowledge and awareness, CDC members know "how to go about their rights"¹⁰² unlike the time when the NSP started. CDC members in Ghor said they now "have an opportunity to meet and discuss development issues and jointly find solutions for their problems".¹⁰³ Also, CDCs from Badakhshan indicated they have learnt more and now they are able to help in the design and costing of their development projects and know how to operate their micro-hydro power projects to produce power supply.¹⁰⁴ More importantly, the NSP has created "democratic and localised leadership", gradually replacing the traditional and unelected leadership at the village level.¹⁰⁵

However, the majority of the training has been directed solely at the elected members of the CDC and not the rest of the community members, something confirmed by the elected members during interviews. Bode, from the NSP, defended this by arguing that "while communities design their own projects, and they are in control of development processes at the community level, it is not realistic and possible to empower everyone".¹⁰⁶ Instead, it is more realistic or feasible to "empower the elected persons at the community level" who can then take up matters on behalf of the rest of community members who have elected them.¹⁰⁷

While the NSP has educated, helped and empowered a large number of CDCs, women have not equally benefited and only the capacity of a limited number of "courageous, liberal and already educated women" has been built under the NSP.¹⁰⁸ Elected women have not been involved in procurement, and social audit is also carried out largely by men.¹⁰⁹ Equally, those who were "not literate and also had mobility restrictions have not been empowered".¹¹⁰ In

⁹⁹ Interviewee 7, above n 2; Interviewee 10, above n 2.

¹⁰⁰ Interviewee 7, above n 2.

¹⁰¹ Focus Group Discussion 3, above n 22.

¹⁰² Focus Group Discussion 3, above n 22.

¹⁰³ Focus Group Discussion 4, above n 24.

¹⁰⁴ Focus Group Discussion 3, above n 22.

¹⁰⁵ Focus Group Discussion 2, above n 20.

¹⁰⁶ Interview with Brigitta Bode, above n 4.

¹⁰⁷ Interview with Brigitta Bode, above n 4.

¹⁰⁸ Interviewee 3, above n 2.

¹⁰⁹ Interviewee 3, above n 2.

¹¹⁰ Interviewee 3, above n 2.

the absence of face to face and direct interaction due to cultural restrictions, elected women can hardly have a constructive dialogue with the elected male members of CDCs, and instead, women have no choice but to endorse decisions made by men.¹¹¹ For instance, elected men would come to the elected women and “seek their signatures” and then go about their business. Therefore, building women’s capacity, in an effort to empower them under the NSP, according to one interviewee at least, has arguably been largely cosmetic.¹¹²

Elite capture appears to be a real obstacle to empowerment. Among the different types of elites, *Arbabs*, who are local power holders, have posed genuine challenges to empowerment. *Arbabs* have had a grip on power in their localities for a long time. In some provinces, such as Ghor, *Arbabism*¹¹³ is prevalent, resulting in elite misbehavior towards the ordinary members of CDCs.¹¹⁴ For example, the *Arbabs* are not allowing poor people to take part in decision making and therefore, there is not “much of empowerment”.¹¹⁵ Often, some power holders control CDCs¹¹⁶ and do not involve community members in the decision making process or seek communities’ advice¹¹⁷ although the extent of this control may vary from CDC to CDC.¹¹⁸

3.1.4 Non-discrimination

Non-discrimination, the fourth element of a human-rights-based approach, is an integral part of HRBA, making sure development reaches all communities, including the most vulnerable, marginalised, minorities and people of all genders. Put otherwise, HRBA requires an inclusive approach. Arguably, the non-discriminatory and unbiased nature of the HRBA is explicit in the NSP’s design as the Programme provides all rural communities in the country, on a per family basis, an amount of USD 200, per phase.¹¹⁹ This way, the poorest of the poor could benefit from the NSP where CDCs consult on their collective development needs.¹²⁰

The staff of Facilitating Partners and community members were in agreement about the observance of non-discrimination in the NSP processes. For instance, the formation of CDCs is done “without consideration of race, gender and ethnicity”.¹²¹ The NSP’s Operational Manual also demands involvement of marginalised households and women during selection

¹¹¹ Interviewee 3, above n 2.

¹¹² Interviewee 9, above n 64; Interviewee 3, above n 2.

¹¹³ The practice of *Arbabs* making decisions and ruling villages.

¹¹⁴ Interviewee 10, above n 2.

¹¹⁵ Interviewee 10, above n 2.

¹¹⁶ Interviewee 10, above n 2.

¹¹⁷ Interviewee 7, above n 2.

¹¹⁸ A similar point was also raised in the World Bank Impact Evaluation of the NSP in 2013; for more details, Andrew Beath, Fotini Christia, Ruben Enikolopov *Randomized impact evaluation of Afghanistan’s national solidarity programme* (Washington DC, World Bank, July 2013) <<http://documents.worldbank.org/curated/en/2013/07/18273450/randomized-impact-evaluation-afghanistans-national-solidarity-programme>> at 5.

¹¹⁹ Interview with Abdul Rahman Ayubi, above n 1.

¹²⁰ Interview with Abdul Rahman Ayubi, above n 1.

¹²¹ Interviewee 1, above n 12.

and implementation of the Programme.¹²² Similarly, the very fact that the NSP was intended to be a national programme underlines its non-discriminatory nature, although national coverage was later compromised by extreme insecurity.¹²³ In order to reach out to the most vulnerable and marginalised communities, FPs also ensure they include people within communities who are victims of power disparities.¹²⁴

Although the NSP has reached more than 37,000 CDCs, it has failed to reach 15 percent of the country. This percentage makes up around 6,000 communities that were not provided with the first round of block grants which happened to be in “extreme insecure areas”.¹²⁵ This is attributed to the unpredictable security situation as the government was not able to reach areas which became extremely insecure in the two years following 2011.¹²⁶ The NSP leadership is disappointed with not being able to reach out to every community as national rollout was one of the main objectives of the programme.¹²⁷ Insecurity has rightly been termed as the biggest challenge to the programme and its mandate which has “undermined the equity objective and non-discriminatory nature” of the NSP to reach every community.¹²⁸

While the NSP may have reached as many communities as security permitted, it has not been able to adequately address needs of persons with disability. This is despite NSP’s Operational Manual requiring CDCs to ensure needs of persons with disabilities are reflected in the development of their community planning.¹²⁹ Hardly any interviewees referred to such instances where physical, financial and social needs of persons with disabilities are reflected in the design of the NSP sub-projects. Efforts by some CDCs were seen to help not the person with a disability but their immediate family members. For example, CDCs try to include family members of the disabled persons so that “the family of the disabled persons can benefit financially from the wages given against labour”.¹³⁰ Perhaps, the issue has also been compounded by the fact that the NSP has addressed collective community rights and not specifically rights of vulnerable populations such as persons with disabilities.

3.1.5 Transparency and Accountability

The fifth and last principle under the human rights-based approach is the requirement for transparency and accountability. The NSP has attached special importance to this principle and has introduced a number of checks and balances to ensure funds are spent in a transparent and accountable manner. These checks and balances are present at different levels of the

¹²² Interviewee 1, above n 12.

¹²³ Focus Group Discussion 2, above n 20.

¹²⁴ Interviewee 2 (the Author, Kabul, Afghanistan, 13 June 2015).

¹²⁵ Interview with Abdul Rahman Ayubi, above n 1.

¹²⁶ Interview with Abdul Rahman Ayubi, above n 1; Interview with Brigitta Bode, above n 4; Interview with Rasoul Rasouli, above n 1.

¹²⁷ Interview with Brigitta Bode, above n 4.

¹²⁸ Interview with Abdul Rahman Ayubi, above n 1; Interview with Brigitta Bode, above n 4.

¹²⁹ Islamic Republic of Afghanistan, Ministry of Rural Rehabilitation and Rural Development (MRRD), The Operational Manual VII, The National Solidarity Programme (2012) <<http://www.nspafghanistan.org/default.aspx?sel=16>>at 23.

¹³⁰ Focus Group Discussion 3, above n 22.

implementation of the Programme. A key issue is how these mechanisms work in the Afghan context.

To begin with, the NSP has applied some of the standard accountability mechanisms, which are used in participatory development and decentralised governance around the world. For instance, funds are only withdrawn if all four signatories, including two women CDC members, complete the relevant forms. Once funds are withdrawn and implementation starts, there are signboards in different locations of each village which show how much has been received and spent and if the funds have been spent for the intended purpose.¹³¹ Such mechanisms enable communities to monitor financial documents, cash books and invoices during the project implementation, in an effort to hold at least the elected male CDC members accountable in a transparent manner.

The above are not the only accountability mechanisms in place. The NSP also “tops up the accountability mechanism with Community Participatory Monitoring”¹³² (CPM) which is comprised of a team of non-elected members of a CDC to hold the elected members accountable.¹³³ In addition, the NSP has grievance handling mechanisms where the Grievance Handling Unit (GHU) “registers any grievance from community members regardless of their receipt channels”.¹³⁴ The NSP expects the issue to be resolved at the field level. However, in the event the issue could not be resolved by the NSP’s field offices, it is then referred to the GHU in order to analyse it further to find a possible solution, under the leadership of the Programme.¹³⁵ Since the establishment of the GHU in 2009, it has received, reviewed and resolved 3,067 grievances.¹³⁶ In addition to the fund flow mechanisms and the internal monitoring, the NSP also benefits from third party monitoring by the World Bank to monitor all the activities of the NSP.¹³⁷ These different layers and forms are in place to make sure funds are not misused but rather spent in an accountable and transparent manner.¹³⁸ These accountability measures in place have also been endorsed by the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR), indicating that the “numerous oversight and internal controls by the rural communities, the government and the World Bank provide reasonable assurances that the NSP funds are used for the intended purposes”.¹³⁹

¹³¹ Interview with Brigitta Bode, above n 4; Interviewee 10, above n 2; Interviewee 1, above n 12; Interviewee 12, above n 12.

¹³² Interview with Rasoul Rasouli, above n 1.

¹³³ Interviewee 1, above n 12.

¹³⁴ Email from Zabi Zahiri (Senior FP-Supervision & Coordination Officer) to Sulaiman Sarwary regarding the National Solidarity Program’s Grievance Handling Mechanism (2010) at 6.

¹³⁵ Email from Zabi Zahiri (Senior FP-Supervision & Coordination Officer) to Sulaiman Sarwary regarding the National Solidarity Program’s Grievance Handling Mechanism (2010) at 8.

¹³⁶ Email from Zabi Zahiri (Senior FP-Supervision & Coordination Officer) to Sulaiman Sarwary regarding the National Solidarity Programme (17 May 2016).

¹³⁷ Interview with Rasoul Rasouli, above n 1.

¹³⁸ Interview with Rasoul Rasouli, above n 1.

¹³⁹ Special Inspector General for Afghanistan Reconstruction (SIGAR) Afghanistan’s National Solidarity Programme has reached thousands of Afghan communities but faces challenges that could limit outcome (March 2011) < <https://www.sigar.mil/pdf/audits/2011-03-22audit-11-08.pdf> > at ii.

While the majority of the interviewees suggested the different requirements for transparency and accountability are largely effective, the various forms can also create practical complications on the ground. For example, the NSP's Operations Advisor was more critical of these forms which are difficult to understand and most require CDCs to "tick boxes".¹⁴⁰ The Environmental Social Safeguards forms are a case in point. They are technical and difficult for NSP staff to understand, let alone members of CDCs.¹⁴¹ Since communities are not able to answer these forms in detail, they are sometimes referred to as the "yes, yes forms".¹⁴²

3.2 Conclusion

The NSP is the development programme with the single biggest outreach across Afghanistan. It is a Programme that is known across the country and carries weight and importance among donors, government, communities and even acceptance among some of the Armed Opposition Groups, where security permits. According to numerous interviewees, the NSP has put in place CDCs which are now recognised as the gateway for development and governance activities. The CDCs have largely provided the platform for communities to be increasingly aware of their rights, have control over their own resources and enjoy basic rights.

The qualitative interviews and Focus Group Discussions suggest the NSP promotes an inclusive approach, "emphasising" the need for empowerment with a voice for the most marginalised, non-discrimination and accountability.¹⁴³ While the NSP is silent on whether the projects provided under the NSP are realised as rights, the NSP leadership believes that the NSP is largely consistent with the human rights based approach.¹⁴⁴ I intend to test this view in Chapter Four.

While the NSP leadership and staff argue that the NSP largely demands robust participation at different levels, women cannot meaningfully take part given the cultural, religious and social challenges. In fact, women cannot come out, in many communities, and are not allowed to socialise in the same way as men do. These are cultural considerations that the NSP does try to take into account, allowing for separate arrangements and meetings for women and men. While this may be appropriate for ordinary members of CDCs, according to a large number of interviewees, it is difficult for the elected female members to carry out their duties in an effective manner. Women have to be accompanied by a male family member, *Mahram*, while meeting another elected male member. Chapter Four will test if the

¹⁴⁰ Interview with Jovitta Thomas, above n 2.

¹⁴¹ Interview with Jovitta Thomas, above n 2.

¹⁴² Interview with Jovitta Thomas, above n 2.

¹⁴³ Interview with Rasoul Rasouli, above n 1.

¹⁴⁴ Interview with Abdul Rahman Ayubi, above n 1.

requirement for inclusive participation under the NSP is possible in the context of Afghan values and traditions.

While women may take part in training and planning processes, according to the majority of interviewees, their role is symbolic and confined to their own meetings. Beyond those meetings, they cannot significantly influence the decision making process. Given their mobility restrictions, they cannot raise their voice and in the process, elected women lose effective control over resources and procurement. Some interviewees even suggested that the agendas are pushed and influenced by men.

Nonetheless, the NSP has given women some recognition and a platform for some participation. Women are recognised in the executive body and they have been given two positions which can only be filled by women. This is a positive development in a country like Afghanistan as it has increased women's representation, at least on paper. Such recognition was unimaginable in 2002, before and during the Taliban era. The NSP has, in some areas, allowed women to come out of their homes and take part in meetings in the community centres where only women meet. There, women may take part in prioritising their development needs. However, according to the majority of male and female interviewees, women are not the ones who make the final decisions. Men decide on projects which may be beneficial for women.

The NSP has also allowed the capacity of both elected men and, to a lesser degree, elected women to be built in order to help implement their projects. According to the majority of the interviewees, the CDCs are versed in accounting, procurement, environmental social safeguard needs of the community, linkages with donors and other government stakeholders and community development work. While the NSP has largely empowered the elected, it has left behind the ordinary communities as it must have been too costly to empower everyone in the community. Perhaps, it would not have been realistic in any case, but building the capacity of the select few may also strengthen the monopoly of the existing traditional power brokers who had ended up in some CDCs.

The NSP, at least on paper, has also addressed disability needs. While the design of the NSP does demand that disability needs be taken into account during the Community Development Plans (CDPs),¹⁴⁵ according to the interviewees and my observations, the NSP projects have not observed disability needs on the ground. Infrastructure projects are not friendly to persons with disabilities and they do not have the necessary access and ramps. Equally, the NSP does not take into account needs of persons who have visual or hearing impairments or mental health issues. This, perhaps, along with female participation, is the biggest shortcoming of the NSP when it comes to its inclusivity.

¹⁴⁵ The Operational Manual VII, above n 129, at 33.

The majority of interviewees said that the NSP has fared very well when it comes to accountability and transparency, at least in secure areas. Accountability has been factored into every step of the NSP's procedures. It has been institutionalised from a grassroots level but also from the top down. Donors have had a heavy emphasis on aid effectiveness. Many interviewees also said that the NSP has been successful in terms of introducing community participatory monitoring whereby community members assess the expenditure and the quality of the work. This has enabled community members to take stock of the work undertaken by the elected members. However, the heavy reliance of the NSP on form filling as an accountability tool in a country where 75 percent of the population may not be literate is somewhat problematic. In addition, holding CDCs accountable in some of the insecure areas has been difficult as the areas are beyond the control of the government although the NSP implementation continues.

Insecurity may have obstructed the vision of the National Solidarity Programme in other ways too. As noted, according to the field work, insecurity has compromised the national coverage and the equitable objective of the programme. Insecurity has not allowed both men and women to come out and participate with the same degree of enthusiasm and vigour. Insecurity has not allowed staff to closely monitor the progress and quality of the project, raising concerns about transparency and accountability and the possibility of the so called 'ghost projects' which only exist on paper. While the NSP has faced a number of challenges, in reality, insecurity has been one of the biggest for the Programme.

Chapter Four

The National Solidarity Programme: Is it implementing a human rights-based approach?

This chapter draws on inputs from both interviewees and development literature to consider whether or not the National Solidarity Programme (NSP) follows a human rights-based approach (HRBA). In doing so, this chapter attempts to synthesise the field work with the literature. While the NSP has made important strides in embracing HRBA, it faces a number of challenges which interfere with smooth implementation. They include insecurity, elite capture, cultural traditions, politicisation of development aid, coordination among different stakeholders and financial sustainability of the NSP and the institutional sustainability of the Community Development Councils (CDCs). Each is studied below.

It is pertinent to note that the literature on HRBA in post-conflict countries also mirrors the challenges faced in Afghanistan by confirming that “applying HRBA in a conflict environment brings new challenges and additional complexities”.¹

The “Citizens’ Charter” which is another step towards a fully-fledged human-rights-based approach is also considered. I conclude with an analysis of the compliance of the NSP with the five elements of HRBA.

4.1 Challenges facing the implementation of the National Solidarity Programme

4.1.1. Insecurity

Growing insecurity challenges all aspects of the implementation of the NSP, in one way or another. This is true in both secure and insecure areas although working in insecure areas is a more significant challenge. To put things into perspective, for example, between 2003 and 2008, security was much better and the [government] had dreams to reach and cover every community.² However, with deteriorating security since 2008, it has been unpredictable and difficult to plan for the extension of the NSP to the remaining areas.³ The 15 percent of communities which have not been covered by the NSP are in “extremely insecure” areas. Unsurprisingly, insecurity has been termed as the single biggest challenge to the equitable nature of the NSP.⁴

¹ United Kingdom Interagency Group on Rights Supported by ActionAid & CARE International, Rights-based approaches and Humanitarian Interventions in Conflict Situations: A Learning and Discussion Document (March 2009) <<http://conflict.care2share.wikispaces.net/Rights+Based+Approach>> at 14.

² Interview with Brigitta Bode, Planning and Policy Advisor of the NSP (the Author, Kabul, 16 August 2015).

³ Interview with Abdul Rahman Ayubi, former Executive Director of the NSP (the Author, Kabul, 22 August 2015).

⁴ Interview with Abdul Rahman Ayubi, above n 3; Interview with Brigitta Bode, above n 2.

While there are varying reports about the extent of insecurity, as much as 30 percent of Afghanistan is not accessible.⁵ As such, security remains a real barrier to effective implementation of development programmes across the country.⁶ Despite growing insecurity across the country and with the first quarter of 2015 being the most violent on record,⁷ the NSP has still been able to implement projects in 85 percent of the country which is either secure or partially secure. This is mainly due to the involvement of communities at the grassroots level. This, in fact, represents a major strength of the Programme as without communities' support, implementation of the NSP would not have been possible in insecure areas. Where the government does not have access, CDCs and *Arbabs* frequently ensure safe passage to the staff of the Facilitating Partners (FPs) to continue project implementation on the ground.

The fact that insecurity has not significantly affected implementation in 85 percent of the country is in stark contrast with other HRBA interventions in insecure environments, such as during the conflict with Maoists in Nepal in the 1990s where "participants were physically abused for acceptance of development projects or even initiating dialogue with NGOs".⁸ The NSP has been branded as a community owned and not government owned programme. That is why, in Afghanistan, the Armed Opposition Groups (AOGs) have largely allowed NSP work to continue because of the community ownership in all the NSP projects. Insecurity has, however, challenged different aspects of implementation. For example, from time to time, in secure areas, communities cannot come out or travel due to fighting and other inherent dangers. This also affects the frequency of the training. Communities may also lose track of the topics they were being trained on, before they are trained on the next. Insecurity, as a result, clearly compromises the quality of mobilisation, appropriate awareness about the NSP realising rights, and by extension, empowering communities who lack sufficient knowledge about the objectives of the NSP.

The 85 percent coverage has been due to a change in strategy. For example, in partially insecure areas, the NSP can operate because of a watered down version of its Operational Manual, namely the High Risk Areas Strategy. According to the World Bank, when the NSP applies its High Risk Areas Strategy, it provides more flexibility in implementation by placing more reliance on community members for implementation.⁹ Also, the Strategy exercises flexibility by providing additional financial incentives known as insecurity

⁵ The World Bank *Assessment of Strategic Issues and Recommendations for Future Directions Technical Assistance Paper National Solidarity Program* (2015 <http://www-wds.worldbank.org/external/default/WDSP/SAR/2015/06/02/090224b082eea8e5/2_0/Rendered/PDF/NSP0Strategic0Directi ons0TA0Paper.pdf>, at 5.

⁶ Report No: 54540-AF, The World Bank, Third Emergency National Solidarity Project (2010) The World Bank <http://siteresources.worldbank.org/INTAFGHANISTAN/Resources/Afghanistan-Reconstructional-Trust-Fund/342296-1313436195294/P117103-National_Solidarity_III-EPP.pdf> at 2.

⁷ Amnesty International, Afghanistan 2015/2016 <<https://www.amnesty.org/en/countries/asia-and-the-pacific/afghanistan/report-afghanistan/>>.

⁸ United Kingdom Interagency Group on Rights, above n 1, at 56.

⁹ The World Bank Report No: 84660-AF *Afghanistan Reconstruction Trust Fund Project Appraisal Document* Afghanistan Reconstruction Trust Fund (2014) <http://www.artf.af/images/uploads/PAD_for_CASA_CSP.pdf> at 7.

allowance, allowing for a lesser role for women and monitoring of the NSP projects by local communities.¹⁰

Although the High Risk Areas Strategy is a good approach because it enables outreach to the most marginalised and insecure areas,¹¹ it is difficult to maintain the same level of standards and quality as in more secure areas. For instance, it is difficult, if not impossible, to attract qualified staff to insecure areas, compelling the National Solidarity Programme and Facilitating Partners to rely on less qualified or unqualified staff to build capacity of communities and CDCs. Similarly, some CDCs in insecure areas, which already make up the 85 percent, are not able to attend training and, therefore, their understanding of the NSP is not accurate. As a result, in insecure areas, “communities and FPs only focus on infrastructure work and not capacity”.¹²

While the effects of insecurity on other elements can be mitigated and at times tolerated, insecurity has been a big obstacle to transparency and accountability. Security remains volatile where the presence of Armed Opposition Groups (AOGs) can pose an immediate threat to communities, provincial government and staff of Facilitating Partners.¹³ Under such circumstances, access becomes a major obstacle, and Facilitating Partners then often resort to local recruitment. FPs have to rely on the authenticity of the project documents provided by local staff and CDCs. If the documents look credible, this may disguise any shortcoming or fraud on the ground where FPs cannot send their own staff. While local recruitment is a good solution to ease mobility restrictions in order to monitor the quality and progress of the projects, it could also lead to collusion between staff and members of CDCs over fabricating documents because physical verification of projects is not possible.

Lack of physical verification in insecure areas has also fostered the development of ‘ghost projects’. These are projects which have existed on paper and for which disbursements have been made but the claimed projects do not exist on the ground. Since physical verification of the project is not possible, it is impossible for the NSP systems to substantiate if either the project or progress is fake or genuine. Although disbursements are made to these CDCs after submitting progress reports, these funds are in fact embezzled since there are no projects on the ground. Ghost projects are hardly reported on as they tend to emerge from extremely insecure areas although their existence is acknowledged by both donors and the Afghan government.¹⁴

In insecure areas, lack of accessibility leads to fiduciary management challenges for the World Bank too.¹⁵ In order to address these concerns, Global Positioning System (GPS) was

¹⁰ At 7.

¹¹ At 7.

¹² Interviewee 8, above n 2.

¹³ The World Bank, Report No: 54540-AF, above n 6, at 19.

¹⁴ CNBC, Afghanistan is on the brink after the US invests \$100 billion (03 February 2016) < <http://www.cnbc.com/2016/02/03/afghanistan-is-on-the-brink-after-us-invests-100-billion.html>>.

¹⁵ The World Bank, Report No: 54540-AF, above n 6, at 19.

introduced to provide coding and progress reports for all infrastructure projects. However, the carrying of such equipment is sensitive because it can also be used for intelligence gathering purposes. If the Taliban realise FPs' staff carry GPS technology, they are arrested on the suspicion of spying and are exposed to grave risks.¹⁶

4.1.2. Elite capture

Some degree of elite capture is inevitable in rural community driven development projects as “elites embody moral, political and social authority”.¹⁷ Unsurprisingly, elite capture has been an obstacle towards meaningful, free and active participation in the NSP because powerful commanders, *Arbabs* and traditional power holders often make unilateral decisions or influence decision making processes.¹⁸ This is consistent with World Bank definitions of elite capture where “elites are actors who have disproportionate influence in the development process as a result of their superior, social, political or economic status”.¹⁹ Elite capture which results in inequitable distribution of resources has also been reported in literature on the NSP.²⁰

Generally speaking, *Arbabs* are present in large parts of Ghor province and some parts of the Northern provinces. *Arbabs* are like village chiefs. They are men. Normally, within a village, there is one *Arbab* who is the authorised person and when he makes a decision, there is no one to change it. Also, for some social issues, the only person who is authorised to make decisions is the *Arbab*. These powerful individuals run some CDCs and make non-consultative and unilateral decisions on communities' resources. For example, some elected CDC members, who are also *Arbabs*, announce their decisions to communities without previously engaging other CDC members.²¹

These powerful individuals and *Arbabs* are fearful of communities' engagement as they perceive community participation will counter their traditional dominance over village affairs. This is not unexpected in HRBA or in a patriarchal society where traditional leaders or strongmen are suspicious and paranoid of citizens' engagement.²² Literature both on Afghanistan and other post-conflict countries suggests that elite capture undermines development because elite capture pushes corruption to the lower lines.²³ Often these

¹⁶ The Asia Foundation, Insecurity, Remoteness pose steep challenges in surveying Afghanistan (November 18 2015) <<http://asiafoundation.org/>>.

¹⁷ Ghazala Mansuri and Vijayendra Rao “Evaluating Community-Based and Community-Driven Development: A Critical Review of the Evidence” (September 2003) The World Bank < <http://siteresources.worldbank.org/>> at 31.

¹⁸ Interviewee 10, above n 2.

¹⁹ World Bank “CDD and Elite Capture: Reframing the Conversation” Social Development How to Series Vol 3 Washington DC (February 2008) The World Bank < <http://www-wds.worldbank.org/>> at 1.

²⁰ Sippi Azarbaijani-Moghaddam, A Study of Gender Equity through the National Solidarity Programme's Community Development Councils (2012) <<http://landwise.resourceequity.org/record/1873>> at 37; The World Bank, *Technical Assistance Paper* National Solidarity Program, above n 5 at 11.

²¹ Interviewee 10, above n 2.

²² United Kingdom Interagency Group on Rights, above n 1, at 19.

²³ United Nations Development Programme (UNDP) “Local Governance, peace building and state building in post-conflict settings” “(2010) The United Nations Capital Development Fund < <http://www.uncdf.org/gfld/docs/post-conflict.pdf>> at 20.

individuals who are in position of power also financially benefit from CDCs.²⁴ Nonetheless, literature on elite capture in post conflict countries also shows that “elite capture does not eliminate all of benefits of community driven development”.²⁵ Rather, elite capture does have the potential to greatly decrease the effectiveness of community driven development”.²⁶

While elite capture may not eliminate all benefits of community driven development,²⁷ such treatment of communities and the marginalised segments is the complete opposite to the inclusive and participatory approach intended under the NSP Operational Manual and more broadly, under a genuine human rights-based approach to development.²⁸ However, unilateral and non-consultative approaches from *Arbabs* and other tribal elders are not surprising given that the NSP has effectively challenged the old power structures which did not include communities in decision making. It also highlights the fact that changing the centuries old stranglehold of the traditional leaders will take time. It is not reasonable to expect a programme in its first decade to wholly transform traditional power structures into democratic ones.

Arguably, the NSP has resulted in the diffusion of power and fragmentation of the elites. The fieldwork has shown that while cases concerning elite capture were reportedly confined to provinces with *Arbabs*, traditional leaders and warlords, the establishment of the CDCs has gradually reduced the power of traditional leaders in CDCs where community members have elected younger leaders of their choice.²⁹ Also, field work showed that the design of the NSP has contributed towards mitigating elite capture by dividing power blocks at sub national governance with more than 37,000 CDCs that represent their respective communities. This is also consistent with literature on the NSP confirming that the creation of CDCs has resulted in diffusion of power across multiple actors.³⁰ Although the level of elite capture may differ from CDC to CDC, they represent the alternative democratic power structure to ensure free, active and meaningful participation. This is a process which requires patience and time.

²⁴ Global Centre for Public Service Excellence “Citizen Engagement in Public Service Delivery” (22 February 2016) The World Bank <<http://blogs.worldbank.org/category/tags/elite-capture>> at 13.

²⁵ World Bank “CDD and Elite Capture: Reframing the Conversation”, above n 19, at 1.

²⁶ At 1.

²⁷ At 1.

²⁸ Dan Banik “Support for human rights-based development: reflections on the Malawian Experience” (2010) 14 (1) The International Journal of Human Rights, 34 at 36; Islamic Republic of Afghanistan, Ministry of Rural Rehabilitation and Rural Development (MRRD), The Operational Manual VII, The National Solidarity Programme (2012) <<http://www.nspafghanistan.org/default.aspx?sel=16>> at 15.

²⁹ Sultan Barakat, Mid-term Evaluation Report of the National Solidarity Programme (NSP), Afghanistan. York, U.K. Post-War Reconstruction and Development Unit (PRDU) From Subjects to Citizens: Local Participation in the National Solidarity Programme. Kabul: Afghanistan Research and Evaluation Unit (University of York; and Boesen, 2006), as cited in The World Bank, *Technical Assistance Paper National Solidarity Program*, above n 5, at 10.

³⁰ Andrew Beath, Fotini Christia, Ruben Enikolopov *Randomized impact evaluation of Afghanistan's national solidarity programme* (Washington DC, World Bank, July 2013) <<http://documents.worldbank.org/curated/en/2013/07/18273450/randomized-impact-evaluation-afghanistans-national-solidarity-programme>> at 2.

4.1.3. Cultural traditions

Meaningful participation, as understood from the NSP and HRBA viewpoint, is also hindered by cultural traditions in the rural Afghan context. It is a taboo, for example, in majority of rural areas for women to step out from the confines of their homes and be seen by other men. In the vast majority of the country, it is unacceptable practice for women to mix with other men who are not their family members. This is even a bigger taboo.

While this is not unusual compared to other traditional and tribal societies which are also characterised by tight control over women, it undermines the possibility of true participation.³¹ Such restrictions are not consistent with the principles of inclusive and meaningful participation as required both by the NSP and HRBA. Put more bluntly, free, active and meaningful participation is not congruent with Afghan values, which require *purdah*,³² or strict separation of sexes, in the rural context, at least. This is the reality in a conservative Afghan rural society where elected females may only talk to female members of CDCs. Also, in most cases, a male family member, or *Mahram*, of the elected female CDC member will relay the feedback to the male CDC members. More importantly, when the Community Development Plan (CDP) is prepared and when women have feedback or ideas, they are shared through a male family member, with no mechanism for follow up. Gender-segregated meetings also mean women are unlikely to directly interact with men about their issues or concerns and, as a result, women may not have ownership and agency of their development rights.

While gender segregated meetings are not consistent with the HRBA requirements of inclusive participation, it is more consistent with the Afghan context which requires separation of the sexes. It is also noted that “gender segregation at the different stages of the NSP does not either lead to team building between women and men or improve gender relations”.³³ Yet, when gender segregated participation is contextualised, it is probably a culturally sensitive and appropriate response to enable more women to come out and take some part in social life and development activities. Separate meetings do allow women to be part of the outcome, albeit with less chance of influencing the process. Put differently, some participation is arguably better than no participation.

Often, the conservative traditions and religious interpretation of Islamic Holy Scripture about women’s role in social and public life can be attributed to “a conflation of conservative and tribal traditions under a [cover] of Islamic argument”.³⁴ There is a mistaken perception

³¹ Mansuri and Rao, above n 17, at 31.

³² Afghanistan Research and Evaluation Unit (AREU) *Does Women’s Participation in the National Solidarity Programme Make a Difference in their Lives? A Case Study in Parwan Province* (2010) < <http://www.areu.org.af/Uploads/EditionPdfs/1034E-Gender%20and%20Participation%20NSP%20CS%202010.pdf>> at 31.

³³ Azarbaijani-Moghaddam, above n 20, at 61.

³⁴ Anastasiya Hozyainova “Sharia and Women’s Rights in Afghanistan” Special Report 347 (May 2014) United States Institutes of Peace <https://www.usip.org/sites/default/files/SR347-Sharia_and_Women%E2%80%99s_Rights_in_Afghanistan.pdf> at 5.

among men that “women’s place is in homes”, according to the religion.³⁵ However, “Islam does not oppose women working and studying, both of which are acceptable in Islam”.³⁶ On the other hand, some conservative Afghan religious scholars had a negative view of the NSP although these scholars did not inquire further about their views to see if they were right or wrong.³⁷ For example, some religious elements had “disparaging views about men who would allow their wives to leave their homes and participate in projects or public life”.³⁸ Conservative attitudes towards women in Afghan society, therefore, are based on the thoughts and interpretations of such individual scholars and community members.³⁹

Existing literature on human rights-based approach to development in a similar religious and cultural context suggests that one could learn from the practices in other countries where a more liberal and gender-based interpretation of the Quranic verses is undertaken by Muslim scholars, resulting in some public space for women.⁴⁰ Literature on HRBA in a post conflict environment suggests that “Mullahs or religious scholars should be sensitised to women’s rights and gender issues so that they understand mentally and spiritually the rights of women”.⁴¹ Increased education of religious elements will also enable them to act as change agents where they can explain rights given to women within the Islamic Holy Scripture.⁴² While literature on the NSP has indicated that the NSP has somehow improved some men’s openness to women’s participation in elections and local governance,⁴³ educating the religious elements about the rights of women requires time and patience and should not be rushed. It would take at least another generation or so in a country like Afghanistan to begin effecting ‘attitudinal change’ towards the role and place of women in public life. Otherwise, it runs the risk of being counterproductive and stamped as Western.

4.1.4. Politicisation of development funding

A fourth key challenge is the politicisation of development funding. Whether one likes it or not, allocation of financial resources is inherently political and more so in a post conflict country with weak rule of law. It would be naïve to suggest otherwise or assume that millions of dollars that flow into a country are purely allocated on the basis of international goodwill. Funding is politicised and reflects, at least somewhat, donors’ individual and sometimes conflicting priorities. Afghanistan is no exception.

While President Ghani’s government is intent on exercising control over funding allocated by the international community,⁴⁴ international development funding has been highly

³⁵ AREU, above n 32, at 13.

³⁶ Azarbaijani-Moghaddam, above n 20, at 49 and 70.

³⁷ At 49.

³⁸ At 49.

³⁹ At 31.

⁴⁰ United Kingdom Interagency Group on Rights, above n 1, at 78.

⁴¹ At 78.

⁴² At 78.

⁴³ The World Bank Report No: 84660-AF, above n 9, at 43.

⁴⁴ Interview with Brigitta Bode, above n 2.

political in Afghanistan as different donors have had preferences for their funds. According to the former Executive Director of the NSP, many donor countries had their own priorities in Afghanistan, which were not in line with those of the NSP, creating a “big mess”.⁴⁵ This is consistent with the literature, on the way foreign development funding has been used in Afghanistan, indicating that the “aid process was influenced by donors’ interests which made it difficult for Afghanistan to take [the] lead in pursuing its own priorities”.⁴⁶ In fact, US government reports state that the United States always used “preference language” to designate specific areas they wished to support.⁴⁷ Documents show the World Bank did “honour US preferences”.⁴⁸

Similarly, other donors had expressed preference to link their financial assistance to a province where they had military presence or their Provincial Reconstruction Teams were based.⁴⁹ Such preference to link development assistance to a donor’s military presence continues to be the case after 13 years in the country. A recent example is the Italian government which has allocated € 120 million to infrastructure projects, the bulk of which will be used in Herat province where the Italians have stationed troops and military advisors.⁵⁰ Similarly, the Netherlands is interested in allocating their funds to the North, particularly in the province of Kunduz where the Dutch had troops and now have military advisors.⁵¹ Thus, it is not entirely clear how the Afghan government intends to influence or *control* donors’ strategic priorities.

Although the PRTs were abandoned in 2012, with the benefit of hindsight, it appears that it was not a wise way to deliver development assistance. Arguably, the PRTs were political and military entities which were tasked with buying quick legitimacy for the new government and its international partners. The PRTs blurred the line between mainstream development actors and military entities, putting NGO staff in great peril if they were perceived as PRT workers.⁵² Also, the PRTs did not have expertise in participatory rural development approaches. Often, the PRTs would provide briefcase loads of dollars to local NGOs that did not know much about development but were rather treating development

⁴⁵ Interview with Abdul Rahman Ayubi, above n 3.

⁴⁶ Mohammad Lateef Totakhail Willy Brandt School of Public Policy *Foreign Aid and Economic Development in Afghanistan, Analysis of German assistance to Afghanistan with reference to the Paris Declaration on Aid Effectiveness* (2011) The Atlantic Community < <http://www.atlantic-community.org/app/webroot/files/articlepdf/Foreign%20Aid%20and%20Economic%20Development%20in%20Afghanistan.pdf>> at 14.

⁴⁷ Special Inspector General for Afghanistan Reconstruction (SIGAR) Afghanistan’s National Solidarity Programme has reached thousands of Afghan communities but faces challenges that could limit outcome (March 2011) < <https://www.sigar.mil/pdf/audits/2011-03-22audit-11-08.pdf> > at 5.

⁴⁸ At 5.

⁴⁹ Totakhail, above n 46, at 54.

⁵⁰ Afghanistan Times, 20 April 2016 < <http://afghanistantimes.af/italy-to-donate-e120m-to-afghan-development-projects/>>.

⁵¹ Agency Coordinating Body for Afghan Relief and Development (ACBAR) The Netherlands Embassy’s fund < <http://www.acbar.org/page/13.jsp?title=Donor-Information>>.

⁵² Seventh report of session (2009/10) House of Commons Defence Committee, *The Comprehensive Approach: the point of war is not just to win but to make better peace* (The Stationery Office Limited, House of Commons. 2009/10) United Kingdom Parliament < <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmdfence/224/224.pdf>> at 58.

work as a business.⁵³ The PRTs would distribute the funds among political and tribal elders who could buy them access and secure passage on the basis of war economy and armed deterrents compared to the mainstream NGOs who worked on the basis of community acceptance.⁵⁴ Often these strong provincial actors were linked with the drug mafia, violations of human rights, warlords and militia commanders.⁵⁵ Similarly, development work by the PRTs has not been cost effective. For example, a new school under the NSP cost six times less than the one built by USAID.⁵⁶ In addition, PRTs had heavy overhead costs for military personnel which were added to the project costs.⁵⁷ This made projects undertaken by PRTs significantly more expensive than those done under the auspices of the NSP.

4.1.5. Coordination among donors and with government

Donor coordination, or lack of it, has also been a big challenge. This has clearly been a frustration to the leadership of the National Solidarity Programme because of the amount spent by some donors in isolation of the NSP. Ayubi noted that the Provincial Reconstruction Teams (PRTs) used funds in isolation from the rest of the programmes.⁵⁸ A significant portion of the international development assistance was channelled directly through the PRTs, effectively bypassing the Ministry of Finance.⁵⁹ The NSP has, with a budget of under three billion US dollars for 12 years,⁶⁰ provided medium term development assistance to 85 percent of the country while the PRTs have spent their funds in a way that may not have addressed basic needs of even 15 percent population.⁶¹ Literature on PRTs in Afghanistan also suggests that PRTs' work was "duplicative of other projects" conducted by other agencies.⁶² Given the seriousness of the situation, President Ghani's first task following his elections in 2014 was to track and coordinate international assistance.⁶³ Even though the PRTs are no longer in place, donor coordination continues to be a problem. The current government is intent on ensuring donor funding is aligned with the deliverables under the National Priority Programmes, including the forthcoming Citizens' Charter.⁶⁴

⁵³ At 58.

⁵⁴ At 60.

⁵⁵ United States Institute of Peace *The US Experience with the Provincial Reconstruction Teams* (2005) < <https://www.usip.org/sites/default/files/sr152.pdf>> at 6 and 7.

⁵⁶ George Packer, Afghanistan's Theorist-In-Chief, the New Yorker July Issue 2016 < <http://www.newyorker.com/magazine/2016/07/04/ashraf-ghani-afghanistans-theorist-in-chief>>.

⁵⁷ Andrea L Hoshmand, Provincial Reconstruction Teams In Afghanistan, University of Maryland, School of Public Policy < <http://faculty.publicpolicy.umd.edu/>> at 24.

⁵⁸ Interview with Abdul Rahman Ayubi, above n 3.

⁵⁹ Lydia Poole *Afghanistan: Tracking Major Resource Flows, 2002–2010 Global Humanitarian Assistance*, (Briefing Paper, January 2011) < <http://www.globalhumanitarianassistance.org/wp-content/uploads/2011/02/gha-Afghanistan-2011-major-resource-flows.pdf>> at 11.

⁶⁰ Beath, Christia and Enikolopov, above n 30.

⁶¹ Interview with Abdul Rahman Ayubi, above n 3.

⁶² Hoshmand, above n 559, at 24.

⁶³ Packer, above n 56, at 6.

⁶⁴ Government of the Islamic Republic of Afghanistan, Realising Self Reliance, Commitment to Reforms and Renewed Partnerships (London Conference on Afghanistan, 2014) < <http://afghanistan-un.org/wp-content/uploads/2014/12/REALIZING-FINAL-SELF-RELIANCE-25-November-2014.pdf>> at 15.

Arguably, the PRTs and the NSP had different objectives. The PRTs often reinforced counterinsurgency outcomes rather than contributing to the long term development objectives of the country.⁶⁵ According to President Karzai, the PRTs served as the “parallel governing structures”, undermining Afghan government and its capacity”.⁶⁶ The significant funding that was channelled through the PRTs did not contribute to the NSP’s strategic objectives. For example, the PRTs did not use the CDCs but traditional leadership which had connections within tribal structures. Certainly, the impact of the NSP could have been bigger if the PRTs had contributed more to the development objectives of the government.⁶⁷

Despite President Ghani’s good intentions, there remains deep frustration on the ground, resulting from lack of donor coordination. The leadership of the NSP has been very critical of the fact that donors would claim in every conference that they would do more work in a more coordinated manner but failed to do so in practice.⁶⁸ One principal explanation could be that the PRTs preferred to link development assistance to secure passage or communities rising against the Taliban. This is also consistent with literature on politicisation of development assistance which admits that “development aid may essentially have political goals”.⁶⁹ Such literature also suggests that “aid policies have integrated national security and broader foreign policy priorities”.⁷⁰

4.1.6. Financial sustainability of the National Solidarity Programme

From 2003 to 2007, over 17,000 CDCs received funding under the First Phase of the NSP whereas around 6,000 new CDCs received additional funding from 2007 to 2011 during the second phase.⁷¹ Between 2011 and 2013, 13,500 new CDCs were funded to complete the 85 percent rollout. Also, during Phase Three, around 11,500 CDC received a second round of block grant.⁷² In other words, out of the 36,500 CDCs that have been funded in the Third Phase under the NSP, only 11,500 CDCs have received a second round of funding.

Since the Afghan government is primarily relying on international donors, the long-term financial sustainability of the NSP is a very real concern. Currently, the NSP stands as the second largest development programme in the world, with external financing of around \$ 2.5 billion over 12 years.⁷³ As discussed in Chapter Two, since 2003, all of Afghanistan’s development financing comes from the international community. This total reliance on external funding poses significant questions as to the financial sustainability of the NSP.

⁶⁵ Kenneth Katzman *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy* (Congressional Research Service, 2011) US Department of State < <http://fpc.state.gov/documents/organization/174244.pdf>> at 37.

⁶⁶ At 38.

⁶⁷ Interview with Abdul Rahman Ayubi, above n 3.

⁶⁸ Interview with Abdul Rahman Ayubi, above n 3.

⁶⁹ Oxfam “whose aid it is anyway? Politicising aid in conflict and crisis” 145 Briefing Paper (10 February 2011) < https://www.oxfam.org/sites/www.oxfam.org/files/bp145-whose-aid-anyway-100211-en_0.pdf> at 7.

⁷⁰ At 9.

⁷¹ The National Solidarity Program “NSP basic introduction” (23 September 2013) <<http://www.nspafghanistan.org/default.aspx?sel=30>>.

⁷² The National Solidarity Program “NSP basic introduction” (23 September 2013) <<http://www.nspafghanistan.org/default.aspx?sel=30>>.

⁷³ The World Bank *Technical Assistance Paper National Solidarity Program*, above n 5, at 58.

Despite its natural resources, Afghanistan remains a poor state and cannot afford the costs of the NSP. Realisation of rights not only takes long time but also requires committed and long term funding, which the government simply does not have. Therefore, it was unsurprising when Ayubi stated “Afghanistan is not ready to promise all human rights to its citizens”.⁷⁴

Already, there have been concerns about the cost effectiveness of the NSP.⁷⁵ One third of the funds for the NSP have come from the United States.⁷⁶ While the US government has suggested it will ask Congress to keep financial assistance to Afghanistan in 2017 “at or near” what it has provided in the last decade,⁷⁷ a change in administration after the 2016 US elections may also mean a change in priorities. Also, the current levels of funding for service delivery under the NSP are not affordable.⁷⁸ Similarly, NSP’s reliance on the Facilitating Partners and its use of management structure which is made up of contracted staff, who are not absorbed into the government systems, are also seen as costly.⁷⁹ In the last four years, NSP’s average budget has been around \$300 million per annum.⁸⁰ Of the total costs, 73 percent goes to communities, 21 percent goes to the Facilitating Partners for facilitation, access and capacity building while 6 percent of the total goes to NSP management costs.⁸¹ These represent substantial figures. Lack of availability of funds, therefore, raises serious questions about the long-term affordability and continuity of the Programme in its current shape and form. As such, sustainability entails maintaining financial support by continuing to invest in the CDCs as a platform for delivery of basic rights.⁸² The Citizens’ Charter is already proposing to change this.

4.1.7. Sustainability of Community Development Councils

In the context of the NSP, sustainability is defined as the ability of CDCs to continue their activities once the Facilitating Partners withdraw.⁸³ While the NSP has largely achieved having functional CDCs, literature shows that CDCs have become donor driven and “the institutional relevance of CDCs fades substantially following project completion”.⁸⁴ A similar concern had been raised before the start of the Third Phase. For example, external

⁷⁴ Interview with Abdul Rahman Ayubi, above n 3.

⁷⁵ The World Bank *Technical Assistance Paper National Solidarity Program*, above n 5, at 1.

⁷⁶ SIGAR, above n 47, at 5.

⁷⁷ Reuters, Donors offer \$ 16 billion Afghan aid at Tokyo conference (8 July 2012) < <http://in.reuters.com/article/afghanistan-aid-idINDEE86700820120708>>.

⁷⁸ Realising Self Reliance, above n 64, at 18.

⁷⁹ The World Bank, *Technical Assistance Paper National Solidarity Program*, above n 5, at 1.

⁸⁰ At 60.

⁸¹ At 60.

⁸² World Bank, “The Effectiveness of World Bank Support for Community-Based and -Driven Development: An OED Evaluation, as cited in Jennifer Brick *Investigating the Sustainability of Community Development Councils in Afghanistan* (Afghanistan Research and Evaluation Unit, Kabul, 2008) Jennifer Brick Murtazashvili < <http://jen.murtazashvili.org/wp-content/uploads/2013/05/CDC-Sustainability-Final-Report-AREU-FINAL.pdf>> at 11,

⁸³ Brick, above n 32, at 11.

⁸⁴ Andrew Beath, Fotini Christia & Ruben Enikolopov (2015) The National Solidarity Programme: Assessing the Effects of Community-Driven Development in Afghanistan, *International Peacekeeping*, 302 at 314.

evaluations showed that “CDCs wither away due to [lack of] project funding”.⁸⁵ Where CDCs do not get additional financial assistance, they will not be interested in having re-elections in the absence of future funding. When re-elections do not take place at the end of each CDC’s tenure, CDCs lose their democratic mandate and may only remain on paper. Unsurprisingly, sustainability of CDCs had been identified as a main challenge and is not unlike other community driven development programmes.⁸⁶

Sustainability of CDCs also depends on the legal status of the CDCs. Once CDCs are recognised as legal entities at the village level, they can attract funding from other sector Ministries.⁸⁷ This seemed not to be initially working as “inter-ministerial rivalry did not allow all Ministries to embrace CDCs as the gateway for development and governance activities”.⁸⁸ Although it took until 2013, the government finally approved a regulation making it binding on all sector Ministries to use the CDCs as the only gateway for development and governance activities.⁸⁹ This regulation enlarges CDCs’ mandate “to encompass broader socio-economic development” at the community level.⁹⁰ Despite this, key sector Ministries are unaware of or reluctant to abide by the regulation due to lack of political will or insufficient awareness about the role of CDCs.⁹¹ If the government’s intention is to channel all development and governance related activities at the village level through CDCs, it will need to clearly legislate the role of CDCs. In fact, the government intends to change the CDCs into Village Councils that will be used as a mechanism for sector Ministries to plan and manage service delivery at the village level.⁹² Village Councils are proposed to be recognised as “the whole of the government institutions” with strong linkages between Village Councils and sector Ministries.⁹³ The Citizens’ Charter, which is discussed separately below, seems to embark on this route so that the legal sustainability of the CDCs will be safeguarded, making it compulsory for all sector Ministries to channel their projects through the CDCs in a coherent manner.

The above discussed challenges pose formidable barriers to the implementation of a fully-fledged human rights-based approach (HRBA) in a post conflict country. In particular, it must be considered whether these challenges fundamentally undermine the human rights based approach to development. While it is clear from the earlier discussion that the NSP

⁸⁵ Brick, above n 32, at 11.

⁸⁶ At 11.

⁸⁷ At 13.

⁸⁸ At 34.

⁸⁹ Decree No.45 by the President of the Islamic Republic of Afghanistan, Independent Directorate of Local Governance and Ministry of Rural Rehabilitation and Development, Policy for Improving Governance and Development in Districts and Villages, 3 (4) (April 2013) <http://idlg.gov.af/Content/Media/Documents/IDLG_April_2013_Issue3052013162843327553325325.pdf> at 3 and 4; The World Bank Report No: 84660-AF, above n 9, at 4.

⁹⁰ The World Bank, *Technical Assistance Paper National Solidarity Program*, above n 5, at 14.

⁹¹ At 14.

⁹² Realising Self Reliance, above n 64, at 18.

⁹³ The World Bank *Technical Assistance Paper National Solidarity Program*, above n 5, at 57.

has had the hallmarks of the human rights-based approach, the following pages study the extent of application of each principle of the HRBA in the NSP.

4.2 Application of the human rights-based approach in the National Solidarity Programme

As established in Chapter One, a human rights-based approach to development comprises five key elements. These are: recognition of rights, meaningful participation, empowerment, non-discrimination, and transparency and accountability of both the processes and of duty bearers. Particular attention, under the HRBA, is given to the principles both equity, equality with marginalised population, including women, minorities and persons with disability receiving particular attention.⁹⁴ This section reviews compliance of the NSP with the five key elements of the HRBA in light of the field work, the literature and the challenges just discussed.

4.2.1. Does the NSP realise rights?

The NSP provides a financial entitlement to each household under the Programme. With the funds, collectively, the communities can access water, education, health facilities and temporary employment. While the government does not recognise delivery of these rights as its legal obligation, the NSP does improve practical access of villagers to these basic rights.⁹⁵ NSP's Impact Evaluation has confirmed that the Programme has improved access to clean drinking water, electricity, education, and health care.⁹⁶ Similarly, the NSP has created 49 million labour days through implementation of sub projects between 2003 and 2013.⁹⁷

While it is true to state that the NSP has realised rights on the ground, the Programme does not mention realising rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR). It is also important to note that the NSP has not been able to provide regular financial assistance to the majority of the CDCs. In most cases, the NSP has only provided a one-off amount of \$33,000 over the course of 10 years to each CDC.⁹⁸ In other words, the government did not plan for the majority of the communities to receive a second round of financial assistance. Although the irregular and one-off financial assistance has represented a missed opportunity to reinforce and consolidate NSP's work,⁹⁹ it is consistent with the concept of progressive realisation as explained under Chapter One. In any case, the current level of funding to CDCs, which comes from the international community, is not financially sustainable.¹⁰⁰ While it is understandable that the government

⁹⁴ OECD, above n 2.

⁹⁵ Beath, Christia & Enikolopov, above n 84, at 307.

⁹⁶ Beath, Christia & Enikolopov, above n 30, at 7 and 8.

⁹⁷ The World Bank *Technical Assistance Paper National Solidarity Program*, above n 5.

⁹⁸ At 8.

⁹⁹ At 10.

¹⁰⁰ At 12

cannot afford the current level of funding to CDCs, a reduced amount of more frequent financial assistance to households at the CDC level will maintain realisation of rights.¹⁰¹

The NSP has realised collective rights and has failed to address individual rights which is the basis of the HRBA. Given the design of the NSP, it is also difficult to justify that the NSP has realised rights for everyone because the fixed amount of \$200 per household is provided regardless of poverty levels or the composition of a household, e.g. if there are persons with disability or the number of children in a given household.¹⁰² As such, the basis for the calculation for the financial assistance needs to be revised to make it more equitable and inclusive. Similarly, while the financial entitlement realises community rights, women's preferences are normally not observed. Literature on the NSP also indicates that women are accorded "low status compared to men",¹⁰³ and that there is low awareness that the NSP also "provides a legally sanctioned platform from which women can become involved and benefit from the development process".¹⁰⁴

4.2.2. Do participation levels meet HRBA standards?

Before assessing whether the level of participation is consistent with HRBA, it is important to note that the idea of participation is very new in Afghanistan. Rural Afghans never had the opportunity to participate in elections at the village level before the introduction of the National Solidarity Programme (NSP) in 2003. It was only in 2004 that communities were gradually introduced to the idea of participating in elections at the village level to elect male and female representatives. Rural Afghans, who make up around 70 percent of the population,¹⁰⁵ had never before been a part of the decision making process to influence their own development priorities. The NSP has revolutionised the idea of participation by allowing both men and women not only to elect their representatives but also to participate in planning, implementing, monitoring and holding the elected accountable. These are important developments towards participation, and by any standard, the NSP has taken major strides in creating space and resources for communities in a post conflict country that continues to be plagued by insurgency and fighting. NSP's Impact Evaluation also confirms that the Programme has increased participation¹⁰⁶ while also improving female participation in local governance where more women take part in the decision making process.¹⁰⁷

While acknowledging all the positive work done so far, participation within the NSP is not without challenges. Meaningful participation also means inclusive participation where both men and women can participate in setting their development priorities. However, despite the

¹⁰¹ At 22.

¹⁰² At 12.

¹⁰³ Azarbaijani-Moghaddam, above n 20, at 61.

¹⁰⁴ At 45 and 61.

¹⁰⁵ Report No: 80177-AF The World Bank, *Afghanistan Reconstruction Trust Fund Project Appraisal Document* (March 25, 2014) Afghanistan Reconstruction Trust Fund <http://www.artf.af/images/uploads/PAD_for_KMDP.pdf> at 19.

¹⁰⁶ Beath, Christia, Enikolopov, above n 30, at 57 and 63.

¹⁰⁷ Beath, Christia, Enikolopov, above n 30, at xi.

best intentions of the NSP, the fieldwork showed that men usually choose the projects while women are secondary and incidental beneficiaries of the projects. Where women are “passive recipients, this does not lead to improved gender equity” because women are not included in the development and decision making processes.¹⁰⁸ While men are free to attend most trainings and make implementation-related visits, women have extensive mobility restrictions due to culture and security reasons to travel outside their homes and villages. As such, challenges relating to mobility and security do not allow women to meaningfully participate,¹⁰⁹ and as a result, women’s voices are largely not heard in the process.¹¹⁰

The involvement of elected women sometimes appears to be mostly symbolic. In insecure areas, this is even worse. There, men push more for their agendas and the elected female CDC members have either little voice or no voice as male family members may express their views on behalf of the elected female CDC members. Literature on women’s involvement in the NSP, even in secure areas, indicates that “there are no mechanisms to ensure women’s voices are heard by the elected male members of CDCs”.¹¹¹ While the two allocated seats for women may have good effects despite cultural constraints,¹¹² meaningful engagement and voice for women in the decision making process, in the rural context, is still a distant reality and is likely to take some time.

During the field work, I also came across different perceptions of meaningful participation. As discussed in Chapter One, development literature requires inclusive participation¹¹³ which is active, free and meaningful.¹¹⁴ Participation within the NSP is comprehensive in the sense that CDC members talk about their rights, take part in discussions where decisions are made about projects, and are continuously involved in the process by ensuring development projects are implemented for the intended purpose. This is consistent with HRBA’s notion that people need to critically engage on issues affecting them and have a say in the decision making process.¹¹⁵ However, as noted in Chapter Three and despite progress made, there remains some real challenges around the ongoing influence of the elite and traditional leadership.¹¹⁶

Inclusive participation also necessitates a meaningful opportunity for participation of marginalised and vulnerable persons, including persons with disability. Such an opportunity implies that persons with disability can participate in all spheres of society on an equal basis

¹⁰⁸ Azarbaijani-Moghaddam, above n 20, at 61.

¹⁰⁹ United Kingdom Interagency Group on Rights, above n 1, at 79.

¹¹⁰ AREU, above n 32, at 29.

¹¹¹ At 31.

¹¹² Beath, Christia, Enikolopov, above n 30, at 83.

¹¹³ Celestine Nyamu-Musembi and Andrea Cornwall “What is the “rights-based approach” all about? Perspectives from international development agencies” (Institute of Development Studies, Working Paper 234, 2004) at 8.

¹¹⁴ At 8.

¹¹⁵ Human Rights Council Of Australia *Symposium Papers - A Human Rights Approach to Development* (1995) <<http://www.hrca.org.au/wp-content/uploads/2008/05/symposium.pdf>> at 3.

¹¹⁶ Interview with Brigitta Bode, above n 2; Interview with Abdul Rahman Ayubi, above n 3.

with their non-disabled peers”.¹¹⁷ There were few examples from the field where persons with disability could be said were meaningfully participating in their CDCs. There was one person who with disability finding his way to the elected body of the CDC. By and large, the field work indicated that, in general, there is no significant participation of persons with disabilities in the work of CDCs. Their needs are not reflected in the planning stage either.

Unsurprisingly, a vast majority of the NSP infrastructure work is not disability friendly and schools, clinics and roads do not have facilities for disabled persons. This is contrary to the NSP’s Operational Manual which does require disability needs to be taken into account and Afghanistan’s commitments under the Convention on the rights of persons with disability.¹¹⁸ Literature on the HRBA shows that not incorporating disability needs can be problematic because often persons with disabilities face discrimination and their needs are rarely taken into account.¹¹⁹ As a result, persons with disability face economic, social and even political exclusion.¹²⁰ Literature from elsewhere also shows that mainstreaming disability into development is a complex process both in the North but more so in the South because of the multiplicity of actors on the ground where practical decisions have to be made.¹²¹ One major challenge with disability needs in HRBA is that it “effectively draws all human beings into mainstream discourse, including the most vulnerable groups such as persons with disabilities”.¹²² This appears to be the case with the NSP which has embraced the concept of formal equality – as discussed below.

4.2.3. Does the National Solidarity Programme empower the Community Development Councils?

The NSP delivers 12 training programmes to CDCs as part of its empowerment package to build communities’ capacity in a number of areas, including procurement, implementation, social audit, linkages with markets, donors and knowing the NSP, among others. These programmes have helped communities to know their rights and are used to build capacity of other community members on procurement, implementation, planning and social audit. Arguably, without communities knowing their basic rights, the process of empowerment cannot start.

Yet, the government has an understandable limitation, in that it cannot build the capacity of each and every community member. Instead, it has opted to build the capacity of the elected CDC members along with other sub-committee members under the CDCs. This will remain

¹¹⁷ German Government, Federal Ministry for Economic Cooperation and Development (BMZ), A Human Rights-Based Approach to Disability in Development (2012, Metzgerdruck, Berlin) Federal Ministry for Economic Cooperation and Development <<https://www.cbm.org/>> at 4.

¹¹⁸ Hozyainova, above n 34, at 5.

¹¹⁹ German Government, above n 117, at 4.

¹²⁰ United Nations Development Programme (UNDP), Promoting Participation of Disadvantaged Groups in Asia and Asia Pacific (2007, at 5) <<http://hrbportal.org/>>.

¹²¹ Hisayo Katsui & Richard Wamai *Human Rights-Based Approach to Disability and Health in Development Cooperation: Perspectives from the South* (2010) The Tokyo Foundation <<http://www.tokyofoundation.org/en/>> at 1.

¹²² Hisayo Katsui and Jukka Kumpuvuori “Human Rights-Based Approach to Disability in Development in Uganda: A Way to Fill the Gap between Political and Social Spaces?” (2008) 10 (4) Scandinavian Journal of Disability Research, 227 at 234.

the case under the proposed Citizens' Charter where "capacity building of members of the Village Councils and select few community members" will take place.¹²³ While this is not consistent with HRBA, this seems to be a fair outcome as long as the wider community is aware of the programme, its objectives and their roles in different stages of its implementation and monitoring. This way, the knowledge and experience will not stay confined to a select few, as CDC members who receive training can pass it on to others.

It is pertinent to mention that the vast majority of community members have either low or no literacy. Elected CDC members continue to fill out NSP forms incorrectly, resulting in delays and frustration. Yet, largely speaking, communities have tried to adapt. The NSP has also simplified its forms over the years. Younger CDC members have better literacy levels, meaning that capacity has not only been created but improved. CDCs are, therefore, better able to plan and implement their projects and carry out community participatory monitoring. As such, the NSP has empowered communities to select and manage their own projects through a bottom up approach.¹²⁴ More importantly, there have been encouraging signs where CDCs have demonstrated their ability to attract and absorb additional funding outside the auspices of the NSP.¹²⁵ The drive behind identifying additional funding has largely emanated from a sense of improved awareness about their rights which needs funding. In this sense, CDCs have been empowered as they can act without waiting for the government or other development actors.

The communities' ability to exercise control over the financial resources has also contributed towards their empowerment. Except instances involving *Arbabs* and challenges facing meaningful inclusion of women, the NSP has largely given communities the power to spend their block grants to fund their selected development priorities, as agreed by the communities.¹²⁶ This is another unique aspect of the NSP because never before in the history of Afghanistan, have communities had direct control over resources allocated to their development priorities. This control is not symbolic but real and transformative. This control has given immense confidence to communities that "they have been trusted to do this".¹²⁷ In no other projects currently implemented in Afghanistan, do communities have a bank account where funds are disbursed to their accounts and they have their own signatories. These are all tangible and potent signs of empowering communities and CDCs by giving them control over financial resources.

In secure areas, communities largely make their own decisions as intended by the NSP and largely in accordance with the HRBA. Communities also have both the mechanisms and ability to ask questions from the elected CDCs about how and where the funds have been

¹²³ Islamic Republic of Afghanistan Project ID Number, P155497 General Procurement Notice *Citizens Charter Elements' Period* (14, April 2016, Kabul, Afghanistan) <www.devbusiness.com>.

¹²⁴ Beath, Christia & Enikolopov, above n 84, at 315.

¹²⁵ Interviewee 7, above n 2.

¹²⁶ Beath, Christia, Enikolopov, above n 30, at 14.

¹²⁷ Packer, above n 56.

spent. However, while communities can ask questions from their elected representatives, they have not been able to “stand up for their rights and [tell] their leaders they are tired of them having all the development projects in their side of the village”.¹²⁸ If we go by this standard, surely the NSP has not been able to empower community members, even men, to stand up against the traditional power holders. Yet, it is important to remember the Afghan context and remain patient– the country is still struggling to overcome decades of civil strife, ongoing insurgency, male-dominated society and little respect for the rule of law.

Patience has worked too. The NSP has progressively empowered communities when one compares the earlier phases of NSP with NSP Three. Under the First Phase, communities hardly knew about the concept of elections and re-elections. Communities had an opportunity at the end of Phases One and Two to assess the performance of the elected CDCs and decide whether they wanted to continue with the same membership or bring change to the CDC leadership. The NSP can positively influence local governance by empowering a more responsible leadership.¹²⁹ This is unprecedented as the NSP has been very transformative because communities know re-election can be used as an opportunity to hold the elected accountable. During the re-election campaigns, communities have been able to put difficult questions to their elected leaders, at least in secure areas. Where CDCs have performed well, the NSP has tremendously contributed towards a more localised, accountable, democratic and empowered leadership, much to the chagrin and annoyance of the traditional leadership.¹³⁰

4.2.3.1. The *Arbabs* and traditional leaders on the way of community empowerment

As discussed above, power structures in rural Afghanistan are still very traditional and dominated by *Arbabs*, traditional power brokers and warlords. Expecting communities to stand up against such powerful persons would be raising the bar too much and expecting standards that would be normal in democracies but not in a post-conflict country with very weak governance structures. Similarly, expecting communities to speak against the *Arbabs* and other traditional leadership can undermine their security because often the *Arbabs* and the traditional leaders have power, armed supporters and resources.

These traditional leadership structures continue posing very real challenges to empowerment. *Arbabs*, the powerful and warlords have a stranglehold over the affairs of some CDCs. This is not new as *Arbabs* and other undemocratic but traditional leaders have ruled these villages for centuries. While CDCs have taken a substantial chunk of powers and responsibilities away from the traditional leaders and *Arbabs*, these traditional power structures do continue making unilateral decisions because they see involvement of communities as undermining their power. Thus, patience and improved community

¹²⁸ Interview with Brigitta Bode, above n 2.

¹²⁹ Beath, Christia, Enikolopov, above n 30, at 22.

¹³⁰ Beath, Christia, Enikolopov, above n 30, at 5 and 22; Focus Group Discussion 2, above n 20.

education will be key in gradually challenging the traditional power structures to continue the journey towards full community empowerment.

4.2.3.2. Female empowerment

Empowerment is not an easy task in a post-conflict and insecure environment not to mention an extraordinary conservative country such as Afghanistan. This is very true in the context of Afghan women who are already marginalised. Unlike men who exercise full control over the allocated resources, both the qualitative data and literature on women's involvement in the NSP illustrate that "full autonomy is not enjoyed by female elected members of the CDCs because women were not in control of funds".¹³¹ Nonetheless, allowing women to be represented at the highest level of CDCs is at least a symbolic empowerment, which has resulted in gradually changing attitudes towards women's role in local governance.¹³² Studies also suggest that the NSP has increased female intra-village mobility and has provided women with a forum to socialise more to discuss their health, education and family issues.¹³³ As such, the NSP has set in motion an important but slow change when it comes to female participation in local governance and decision making processes.¹³⁴ Yet, in light of the qualitative data and slow progress on women's participation, it would take much more time for women to be meaningfully involved in decision-making processes.

4.2.4. Does the National Solidarity Programme adhere to the principle of non-discrimination?

At the outset, it is pertinent to note that the NSP is the first programme in the history of the country that has reached almost every community. Never before in the history of Afghanistan, have Afghan citizens benefited from the kind of basic rights the NSP has provided. The NSP intended to have a national rollout and coverage. However, as noted above, extreme insecurity has meant 15 percent of the communities, which are the hardest to reach,¹³⁵ have not benefited from the NSP. This has undermined the national rollout, as almost 6,000 communities have not received their basic rights under the NSP. Extreme insecurity has therefore further penalised the most vulnerable communities. Nevertheless, the 85 percent coverage of the CDC has helped establish government presence and deliver development in many remote and insecure areas.¹³⁶ The NSP allows each household, irrespective of origin, language or belief, to be part of a CDC and benefit from the block

¹³¹ AREU, above n 32, at 31.

¹³² Sultan Barakat, Mid-term Evaluation Report of the National Solidarity Programme (NSP), Afghanistan. York, U.K. Post-War Reconstruction and Development Unit (PRDU) From Subjects to Citizens: Local Participation in the National Solidarity Programme. Kabul: Afghanistan Research and Evaluation Unit (University of York; and Boesen, 2006), as cited in The World Bank *Technical Assistance Paper National Solidarity Program*, above n 5, at 10.

¹³³ Beath, Christia, Enikolopov, above n 30, at 6.

¹³⁴ Azarbaijani Moghaddam (2010); Barakat (2006), Echavez (2010)) as cited in Beath, Christia, Enikolopov, above n 320, at 6.

¹³⁵ The World Bank *Technical Assistance Paper National Solidarity Program*, above n 5, at 36.

¹³⁶ At 53.

grant. Thus, the non-discriminatory and unbiased nature of the programme is a positive element of the design of the NSP.

If non-discrimination is understood as making sure all households benefit, the NSP largely achieves this standard. For example, the Operational Manual states that the “core objectives necessitate complete social inclusion for the vulnerable communities”.¹³⁷ On the ground, one of the strengths of the NSP is making sure all the households within a given community benefit from the NSP. The NSP not only ensures they are included but it also ensures the development needs of the minorities, Internally Displaced Persons (IDPs), returnees are also taken into account and that these segments are adequately represented within the CDC.¹³⁸

However, the NSP only targets communities and provides them with their rights at a collective level. It does not address individual rights. This represents a problem in the design of the NSP. Since individuals have different needs for the same rights, the NSP also does not take this into account. In other words, the NSP takes a formal equality approach and not a substantive equality approach. Under the formal equality model, both women and men are regarded as the same without taking into account their biological and gender differences.¹³⁹ Everyone has access to the same level of opportunities. On the other hand, under the substantive equality model, the focus is on equality of outcome, equal access and equal benefits for both men and women, including persons with disabilities.¹⁴⁰ As discussed above, the NSP has produced attitudinal change towards local governance. Women and other marginalised groups who were not part of the decision making processes on development matters are actively taking part now. This is in line with the requirements of “transformative” equality where social norms and entrenched causes of discrimination are addressed.¹⁴¹ Transformative equality is taken well beyond substantive equality as real empowerment is achieved through changing power relations.¹⁴² While the NSP aspires to focus on transformative equality by changing behaviours and perceptions about participation and empowerment, in practice, the NSP has only applied a formal equality model.

While having aspirations for transformative model, there are various reasons for adopting a formal equality model. The country still does not have an accurate and up-to-date census which has not been possible because of ongoing insecurity.¹⁴³ The electronic Identity Card Project has failed to start and continues to face delays due to political challenges.¹⁴⁴ In

¹³⁷ The Operational Manual VII, above n 28, at 42.

¹³⁸ At 23.

¹³⁹ International Women’s Rights Action Watch (IWRAP) Building Capacity for Change: Training Manual on the Convention on the Elimination of all Forms of discrimination against Women (2001) Faculty of Law, University of Hong Kong <<http://www.law.hku.hk/hrportal/wp-content/uploads/file/Session5.pdf>> at 2.

¹⁴⁰ At 3 - 5.

¹⁴¹ Ramona Biholar, *Challenging the Barriers to real equality: Transformative Equality* (June, 2014) <<http://www.parlamerica.org/uploads/documents/article-ramona-biholar-en.pdf>> at 6.

¹⁴² At 6.

¹⁴³ Organisation of Islamic Cooperation, Population & Housing Census in Afghanistan <<http://www.oicstatcom.org/imgs/news/image/831-s2-afghanistan-en.pdf>> at 8 and 9.

¹⁴⁴ Tolo News, Ghani Looks to Expedite ID Card Rollout, Improve Program's Public Image (July 2015) <<http://www.tolonews.com/>>.

absence of accurate data, the government has not been able to plan and assist with the realisation of rights for individuals and instead has seemed content with the provision of rights at the collective level. While the provision of rights at the community level can be contextualised and understood, the community approach leaves space for individual discrimination because it does not take into account the unique and separate needs of individuals such as women and persons with disabilities. As discussed above, financial constraints faced by the government can be another plausible explanation.

Lastly, if non-discrimination is seen from the point of view of persons with disability, the NSP also meets this test on paper. The Operation Manual is very specific about it. For example, it requires CDCs “to ensure needs of minorities and persons with disabilities are included”,¹⁴⁵ “equity of distribution of benefits among communities ensured” and the proposed projects have “community wide approval”.¹⁴⁶ However, on the ground, consultations with persons of disabilities is hardly happening. Almost all the NSP projects seen and visited are not disability friendly and none has facilities for the disabled. As a result, and despite the insistence of the Operational Manual, the NSP projects are designed without disability needs being taken into account.

4.2.5. Does the National Solidarity Programme promote transparency and accountability?

Transparency and accountability are key elements of the NSP’s design and implementation mechanisms. These mechanisms are not only present on paper but also in practice, helping to ensure CDCs’ funds are spent according to their own plans. As discussed in Chapter Three, CDCs are required to fill out numerous forms which facilitate and ensure transparent and accountable implementation. While these forms normally serve as additional layers on transparency and accountability, the text heavy forms are difficult for some community members with no or lower literacy levels.

In secure areas, the CDCs have robust transparency and accountability mechanisms in place. To begin with, funds are disbursed only if all four signatories (two male and two female) have signed. Once funds are released and implementation begins, the Community Participatory Monitoring (CPM) team keeps an eye on the funds which have been withdrawn and checks where and how the funds have been utilised. The CPM team visits project sites too although such visits are normally conducted by male members given the mobility restrictions for women. If the CPM team raises concerns, there can be wider community support in making sure projects are implemented in a transparent manner and funds are used for the intended purpose.

Since the NSP is a community-led development programme, community members can also carry out a social audit which allows them to look at the entire “block grant against approved

¹⁴⁵ The Operational Manual VII, above n 28, at 33.

¹⁴⁶ At 23.

projects and against actual expenditures” and see “if the procurement has been done in accordance with the NSP regulations”.¹⁴⁷ CDCs are required to install whiteboards which are displayed to the public in an area accessible to all.¹⁴⁸ The community whiteboards are very simple, yet effective, tools for keeping track of funds and expenditure rates. Communities can also look at even minor details such as cashbook, invoices, dates and those who carried out the procurement. However, as noted in Chapter Three, this may not happen in CDCs which are dominated by *Arbabs*. The social audit, community participatory monitoring and community boards are effective ways to ensure communities are aware of the funds and how and where they have been spent. Thus, the NSP mechanisms are intended to ensure communities can keep the elected CDC members honest, the process transparent and promote accountability at the CDC level. Such improvements are also consistent with reviews of the NSP indicating there is “evidence of an impact on bottom-up accountability”.¹⁴⁹

The community-led mechanisms are appealing and effective because community elders also try to intervene and resolve matters amicably and without resorting to other means and often this is effective. For example, interviewees suggested that elders can proactively help in retrieving lost funds by convincing CDC members to bring back embezzled funds, if needed. Elders also try to be the messengers by warning CDC members that if they do not return the funds, their projects risk suspension from the NSP. Where community-led mechanisms do not work, and given the weak rule of law, not much can be done about it. Therefore, it is in the best interest of the communities to resolve any pending issues internally so that their future instalments are released in a timely manner to avoid implementation or seasonal delays and financial resources are not wasted or misplaced.

While CDC members do not receive any salary and work voluntarily, a degree of administration costs are covered under each project. These are reimbursed by the NSP. Nonetheless, it seems there may be cases where the CDC members tamper with the price of materials required for their projects and use some of the funds for their logistical and administrative needs as they have to travel from their villages to their districts and most often to the provincial centres.¹⁵⁰ This requires lodging and transportation costs and the costs covered by the NSP may not be sufficient. As a result, some CDC members may charge their expenses,¹⁵¹ both legitimate and illegitimate ones, against the CDC’s project costs, without declaring so. This also opens up room for collusion between CDCs’ elected members and suppliers where the additional administrative costs are built in the project’s costs without being reflected in the final sum.

¹⁴⁷ The Operational Manual VII, above n 28, at 40.

¹⁴⁸ At 8.

¹⁴⁹ Beath, Christia, Enikolopov, above n 30, at 4.

¹⁵⁰ Interviewee 4, above n 3.

¹⁵¹ Interviewee 4, above n 3.

Although the level of understanding among male members of the CDCs about transparency and accountability was good, the level of understanding about transparency among the female members of CDCs was perceived as low and weak. For instance, women said “they are sure the money is spent in a transparent way”¹⁵² without knowing what mechanisms were there to support transparency. Plausible explanations can be presented. For instance, women have severe mobility restrictions which do not allow them to leave their homes and villages. Also, the Afghan culture and values in the rural context do not encourage female participation in public life. Moreover, gender disparity remains high in Afghanistan where 45 percent men are literate compared to only 18 percent literate adult women.¹⁵³ Improved literacy levels will help women respond better to accountability and transparency needs of the Programme.

The NSP has made important strides to realise basic rights in line with requirements of HRBA. As discussed above, the NSP largely meets the requirements of a human rights-based approach, bar formal recognition of the rights as a legal obligation and the extent of participation of women and persons with disabilities. The irony, however, is that realisation of rights is a process. It neither happens overnight nor as a result of a one off financial assistance. Rather, realisation of rights, specially economic, social and cultural rights, happens progressively, with individual and collective steps, with the maximum of the available resources and over a period of time. The NSP seems to have positively contributed to this process. Yet, a more sustained effort is needed to consistently provide for core set of basic rights which requires long term commitment. The Government has, therefore, proposed the Citizens’ Charter which illustrates its obligation of conduct, as discussed in Chapter One. It will need to be seen, nonetheless, if the Afghan government’s conduct leads it to its obligation of result and realises core set of rights to the population, fully in line with other principles of HRBA.

4.3 Is the Citizens’ Charter embracing a fully-fledged human-rights-based approach?

In September 2015, the Afghan government announced that it intends to “restore security, achieve fiscal sustainability, support economic growth and create jobs”.¹⁵⁴ One major initiative to restore economic growth was the announcement of the Citizens’ Charter.¹⁵⁵ Although there is not (yet) a standard document, it is expected to “guarantee a minimum set of core services [rights] to all citizens, using CDCs as the vehicle for service delivery”.¹⁵⁶

¹⁵² Focus Group Discussion 1/female (the Author, Kishim District Badakhshan Province, 10 August 2015).

¹⁵³ United Nations Education, Scientific and Cultural Organisation, International Literacy Data 2014 < <http://www.uis.unesco.org/literacy/Pages/literacy-data-release-2014.aspx>>.

¹⁵⁴ Government of the Islamic Republic of Afghanistan, Concept Note: Citizens’ Charter September 2015 at 4.

¹⁵⁵ Ministry of Rural Rehabilitation and Development “Citizen’s Charter Consultation Meeting held at the MRRD” (14 June 2015) < <http://mrrd.gov.af/en/news/48086>>.

¹⁵⁶ The World Bank “Country Summary Brief – Afghanistan” (22 June 2015) < <http://siteresources.worldbank.org/>> at 2; Islamic Republic of Afghanistan, Ministry of Foreign Affairs, Afghanistan National Development Strategy < <http://mfa.gov.af/>>; Islamic Republic of Afghanistan, Ministry of Rural Rehabilitation and Development, General Procurement Notice (April, 2016) < <http://mrrd.gov.af/en>>.

The Charter, which represents an ambitious plan from the government,¹⁵⁷ proposes to cover 30 percent of each of the 34 provinces in the country during its First Phase from 2017 to 2020.¹⁵⁸ Through the Citizens' Charter, the Afghan government has promised to "ensure citizens' rights to development"¹⁵⁹ and "help poor communities get minimum services"¹⁶⁰ that any state should provide to its citizens to lead a dignified life.¹⁶¹ This is the first time the government invokes the "right to development" language in practice. The Charter will also improve the "state-citizen" relationship and build confidence in the government's capacity to respond to communities' basic rights.¹⁶²

Ayubi's earlier prediction that the Citizens' Charter will build on the NSP work seems to be accurate because the government intends the Citizens' Charter to be "a compact between the government and its citizens".¹⁶³ Although the government intends to provide water, education, health facilities and jobs under the Citizens' Charter, interestingly, the government is not using the word "right". Instead, it has opted for "services". Once the Citizens' Charter comes into effect in 2017, these services will be provided not by one Ministry but through a coordinated approach among all sector Ministries.¹⁶⁴ The government's avoidance of the word "rights" is not entirely unsurprising. It is consistent with the Afghan government's reporting to the United Nations on its implementation of human rights. There, for example, the Afghan delegation has interchangeably referred to ESCR in its universal periodic reporting to the United Nations as "rights" and "services".¹⁶⁵ While the failure to use the language of "rights" is disappointing, the wording still represents a paradigm step forward from the previous administration which did not accept even the provision of these so called core services as the development rights of the Afghan citizens.

Already, due to financial constraints, the government has confirmed it will only cover 30 percent of the country under Phase One of the Citizens' Charter.¹⁶⁶ Although this incremental and only partial coverage of population under the Citizens' Charter raises concerns in terms of principle of non-discrimination under the HRBA, it is arguably consistent with the concept of progressive realisation, as discussed in Chapter One.¹⁶⁷ Understandably, the reference to resources' availability does challenge realising everyone's rights at once.¹⁶⁸ If a progressive

¹⁵⁷ General Procurement Notice, above n 156.

¹⁵⁸ Email from Mamoon Khawar (Head, Facilitating Partners Management Department, National Solidarity Programme) to Sulaiman Sarwary regarding the announcement of the Expression of Interest for the Citizens' Charter (5, July 2016).

¹⁵⁹ General Procurement Notice, above n 156 at 4.

¹⁶⁰ Realising Self Reliance, above n 64, at 18.

¹⁶¹ Concept note for Citizens' Charter, above n 154, at 4.

¹⁶² The World Bank *Technical Assistance Paper National Solidarity Program*, above n 5, at 12.

¹⁶³ General Procurement Notice, above n 156.

¹⁶⁴ Project ID Number P155497, above n 123.

¹⁶⁵ Human Rights Council Twenty-sixth session "Afghanistan's Report to the Working Group on the Universal Periodic Review" A/HRC/26/4 (4, April 2014) Office of the High Commissioner for Human Rights > <http://www.ohchr.org/EN/HRBodies/UPR/Pages/AFSession18.aspx> at 3 and 4.

¹⁶⁶ Project ID Number P155497, above n 123; Realising Self Reliance, above n 64, at 18.

¹⁶⁷ ICESCR, art 2 (1).

¹⁶⁸ Manisuli Ssenyonjo *Economic, Social and Cultural Rights in International Law* (Hart Publishing, Portland, 2009) at 10; ICESCR, art 2 (1).

approach is to be taken, the focus, therefore, should be on the most vulnerable and marginalised population.

In its effort to progressively realise the rights of the population, the Citizens' Charter should take a number of points into account. For instance, the Citizens' Charter can ensure a bottom up approach where not only communities but district and provincial authorities have an opportunity to take part in consultations leading to the design of the Charter. While there is a degree of de-centralisation among CDCs in terms of resources, the decision on resource allocation is made at the national, or even at the international level. Provincial authorities may not have a big say in it either. District authorities have even a lesser stake while the communities who are the participants in the projects have no role in the resource allocations. These areas need to be taken into account under the design of the Citizens' Charter. Otherwise, the communities, district and provincial level stakeholders will become disengaged participants.

The Citizens' Charter also provides an opportunity to solidify the role of the Community Development Councils as the only gateway for development and governance activities at the village level, further contributing to the sustainability of the CDCs. Since the Charter will represent a whole of the government approach, it will also ensure smoother coordination among other stakeholders for using the CDCs as the delivery mechanism for development rights. Yet, it is also important not to overburden CDCs with too many activities. Building CDCs' capacity in a more coherent manner will be key to enable CDCs to take on increased workload. In order to take increased workload, the Citizens' Charter will also need to draw more effectively on all the possible human resources within each community and allow for a more inclusive and meaningful role for women and other marginalised segments of the communities.

Lastly, the NSP has resulted in the creation of democratic entities at the village level. While this is a positive development as it decentralises power and involves communities agreeing on their own priorities, only functional CDCs that mobilise themselves, hold elections and implement their projects will not be productive. It is imperative to create economic opportunities around CDCs. That is why the Citizens' Charter is expected to go beyond functional and democratically elected CDCs and create economic opportunities at the village level.

4.4 Conclusion

The qualitative interviews and the literature on the NSP clearly indicate that the NSP has improved access to basic rights and also contributed positively towards awareness of people about their rights. It has increased participation levels (particularly for men), provided at least symbolic recognition of women as equal partners to their male counterparts, and led to the empowerment of largely men but to a lesser degree women, as well as transparency and

accountability at the village level. While the NSP is consistent with the principles of HRBA, the extent of compliance with each element is debatable and needs contextualisation.

Empowerment cannot take place without communities not knowing about their rights. Knowing about their rights depends on effective and accurate awareness about the objectives of the NSP. While men perceive the NSP as realising rights, women's awareness has been limited by lack of mobility and inability to participate in training and capacity-building activities. Irrespective of communities' understanding, on the ground, the NSP has realised their rights to water, education, health and short term employment. On paper, the NSP also recognises communities' entitlement to financial grants with which their rights are subsequently realised. However, while the government accepts communities have a right to financial grants, the government is not willing to accept the rights realised under the NSP as a legal obligation. Lack of formal recognition of citizens' rights to economic, social and cultural rights is also inconsistent with the Afghan government's ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The NSP does require participation from both men and women. In most areas, men participate actively and freely in all stages of the NSP and are part of the decision making process from the beginning till the end. Aside from those CDCs dominated by *Arbabs* in the Northern provinces, male members of CDCs can lead planning sessions and take part in procurement. Men also play an important role in monitoring projects. As such, male participation is robust and largely consistent with the requirements of both the NSP and HRBA.

There has been some progress with female participation in decision making process, although arguably this has been largely symbolic. The NSP has symbolically empowered women by adopting an egalitarian approach of having two male and two female elected persons at the helm of each CDC. This, in itself, represents an important recognition of women's role in the decision making process. There are even some brighter examples where a few liberal and educated women, by risking their lives, have bravely represented their CDCs.¹⁶⁹ In a conservative country like Afghanistan, even a symbolic role has benefits as it has countered the traditional dominance of male elites over local governance and this can be seen as a positive development. Nevertheless, the reality is that women's participation is severely curtailed by local culture, tradition and taboos. Effectively, face to face interaction between men and women is not viable in most communities. Instead, gender segregated meetings becomes the routine. This creates its own set of challenges and constraints for women to meaningfully participate and improve their awareness and understanding about the Programme and, by extension, about their rights, responsibilities and expectations from the government.

¹⁶⁹ Interviewee 3, above n 2.

Gender segregated meetings have ostensible limitations as it does not allow a direct and face to face discussion between men and women. It does not allow women to put their questions and queries to their male counterparts. Arguably, it disadvantages women. On the other hand, gender segregated meetings do at least enable female Social Organisers to provide an important bridge between men and women when they discuss their respective development priorities before, during and after implementation. Although separate meetings and arrangements do not meet the requirements under HRBA to allow for free, active and ultimately meaningful participation, separate meetings are arguably culturally acceptable. Separate meetings are an example of an evolving solution to include women at least in some way in the development process on the ground.

While the NSP includes minorities and other marginalised groups, it does not meet participation levels for persons with disability. The challenge is in implementation because the NSP Operational Manual clearly requires inputs from persons with disability. Arguably, this becomes the Facilitating Partners' responsibility to ensure such inclusion. Either because of time constraints or logistical challenges, inputs from persons with disability are mostly not included. As a result, persons with disabilities have not had their rights realised under the NSP. Critically speaking, the NSP focuses on rights of community as a whole. It sees the community as largely homogenous. This is problematic because within the community there are different persons with different needs.

In secure areas, arguably, the NSP has positively contributed to the empowerment of CDCs. CDCs have been able to largely make their decisions in a transparent and accountable manner. Communities also ask the elected male members about how and where the funds have been used. In some secure areas, although the traditional structures have been replaced by democratically elected CDCs, the traditional leaders and *Arbabs* continue to exercise some control over village affairs. *Arbabs* and other traditional leaders typically make unilateral decisions as they perceive community involvement as a threat. The NSP, nonetheless, has incrementally challenged the traditional leadership structures in the last few years, thereby gradually reducing their influence and positively contributing to a localised and democratic leadership.¹⁷⁰

In some insecure areas, implementation of the NSP has been able to go ahead because communities have negotiated access with the Armed Opposition Groups. This is one of the main strengths of the NSP as without the communities' negotiated access, it would have been impossible for NGOs to access the insecure areas and provide basic rights. Yet, realisation of basic rights in an insecure environment comes at a cost. Facilitating Partners' staff and even CDCs' elected officials have been kidnapped and killed.¹⁷¹ It is hard to imagine that empowerment can take place in an environment filled with threats to lives and

¹⁷⁰ Beath, Christia, Enikolopov, above n 30, at 5 and 22.

¹⁷¹ Pajhwok News Agency, 6 NSP workers killed, MRRD slams incident (August 2013) < <http://www.pajhwok.com/en/2013/08/27/6-nsp-workers-killed-mrrd-slams-incident> > ; High Beam Research, 5 NSP workers kidnapped in Maidan Wardak (July 2014) < <https://www.highbeam.com/doc/1G1-373322669.html> >.

livelihoods. Communities are also reluctant to come out for training programmes in a hostile and insecure environment and, therefore, much of the so called “training” is done by way of a false recording of attendances of the participants. Not much empowerment has taken place in insecure areas where the primary focus has been on delivery of infrastructure.

The NSP covers 85 percent of the country in geographic terms and ensures inclusion of households of all backgrounds within each community, including minorities and Internally Displaced Persons. Despite the NSP’s inclusive approach, covering all members within a household that has different needs has proven to be challenging for women and particularly for persons with disabilities. This is because the NSP looks at the household as a whole and provides a financial grant per household irrespective of its makeup. This is problematic for persons with disabilities, women within a household or any unusual household who may have different needs. While the NSP can claim it has covered the communities in a given locality, the final projects are intended for the collective use of the community, and not strictly adhering to the needs of these marginalised groups. As such, the NSP does not sufficiently meet the non-discrimination criteria of the human rights-based approach, including specific needs of women and persons with disabilities.

One area where the NSP has a demonstrable strength is accountability and transparency of both the disbursed funds to the CDCs and transparency of the processes. There is a genuine presence of accountability mechanisms at the community level which contribute to transparency of the processes. However, a distinction has to be drawn in terms of accountability and transparency between secure and insecure areas. In secure areas, once funds are disbursed, communities can keep a regular and real eye on all the steps, starting with planning, prioritising, procurement and implementation. Community notice boards are available in each CDC where each step of the project is reflected, capturing details on budgets and progress of work. The Community Participatory Monitoring and Social Audits are very effective tools to ensure the funds have been spent for the intended purpose. Where this is the not case, grievances can be raised and are dealt with at the appropriate levels, leading to the Grievance Handling Unit, sitting under the Executive Director for the NSP in Kabul. The NSP has introduced a culture of bottom up accountability which was unheard of before its inception in 2004. As such, in secure areas, the NSP largely meets the HRBA criteria of accountability and transparency.

In insecure areas, accountability and transparency face grave and very real challenges. For instance, it is difficult or impossible to access and monitor ongoing projects in insecure areas. There have been reported instances of ghost projects which exist on paper but not on the ground. The NSP has checks and balances in place. For instance, it would not disburse the next instalment unless it is satisfied with the completion rate for the earlier instalment. However, if CDCs’ reporting from a given insecure project is credible and does not raise suspicion, there are no possibilities of identification and verification of ghost projects. They have to be identified and then investigated, something which is further complicated by lack

of access and ongoing security issues. In these circumstances, it is understandable why the NSP did not cover the remaining 15 percent of the country which had been classified as extremely insecure.

In insecure areas, community members, and more so women, cannot come out due to fighting or threat of outbreak of fighting to take part in all steps of their NSP projects. Just like a secure CDC, where tribal elders or *Arbabs* lead CDCs, they make unilateral decisions without involving communities. Because of insecurity, community boards are not elected and, therefore, details on budget and progress of projects are not captured. All of this makes it very difficult for the community members to keep track of their projects, which may create room for abuse. While community ownership still ensures NSP projects are implemented in insecure areas, and funds are spent as per plans, insecurity poses grave practical challenges to monitor the progress and quality of work. Given the magnitude and level of increasing insecurity, accountability and transparency are constantly challenged. In light of the aforementioned reasons, the NSP does not meet accountability and transparency criteria in insecure areas.

Implementation of the NSP has been tested by various challenges including insecurity, elite capture, traditional values and politicisation of aid. While the list of the challenges is long, and understandably so in a post-conflict country like Afghanistan, financial sustainability of the NSP and the institutional sustainability of the CDCs remain potent challenges. Both are inherently linked. Although the NSP has been assisting with the realisation of basic rights such as water, schooling, health and short term employment, there have been ongoing concerns about its fiscal sustainability. The Citizens' Charter is expected to face similar challenges.

For the CDCs to remain functional, in addition to having re-elections at the end of their three year period, it is imperative to create economic opportunities around them. This way, it is more likely to bring a positive change in the lives of the communities. Access to basic rights and creation of economic opportunities are also likely to lead towards a more dignified life for communities. Economic opportunities around CDCs will also make CDCs less dependent on international development assistance – hence contributing to the sustainability of Village Councils under the Citizens' Charter and its ultimate affordability.

Chapter Five

Conclusion

The aim of this thesis was to consider whether the National Solidarity Programme in Afghanistan reflects a genuine human rights-based approach to development. The thesis set out the generally accepted principles of the human rights-based approach to development. These principles are recognition of rights, participation, empowerment, non-discrimination and accountability and transparency.

I started this research by attempting to capture the human rights framework in Afghanistan. In doing so, I carried out field work and then assessed the application, or extent therein, of the principles of the human rights-based approach in the National Solidarity Programme.

I also undertook a literature review to capture the relationship between human rights and development. Although human rights include economic, social, cultural, civil and political rights, my focus has been on economic, social and cultural rights (ESCR) as ESCR have provided an important foundation for the human rights-based approach to development. Similarly, ESCR have also brought tangible benefits to poor people and contributed to the realisation of human dignity.

While noting that human rights remains a contested concept, I discovered that human rights are based on the notion that each human possesses rights by virtue of being a human being. Development is also increasingly recognised as a human right in and of itself because without development human beings will not be able to have a dignified life. Both concepts are inherently linked and interdependent as without development, there are no rights and without realisation of rights, development cannot take place. Yet, tensions exist between different thinkers. For example, opponents of ESCR term these rights as state interventionism and social manifesto while proponents of ESCR contend these rights are essential for a dignified life. These divisions reflect not only the political climate in which the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were drafted but also ongoing ideological differences. Since the Vienna Conference in 1993, opponents of ESCR have gradually relaxed their position although there remains a divide between CPR and ESCR.

ICESCR was adopted in 1966 and is now widely ratified at the international level, including by Afghanistan. In order for human beings to have a dignified life with basic rights to water, education, health, employment and housing, it is imperative states respect, protect and fulfil these rights, as enshrined in the Covenant. However, universal realisation of the ICESCR on the ground is far from the vision of its drafters. Lack of financial resources, inequitable development and conflict are key challenges. Also, progressive realisation of human rights is more difficult in developing countries because these countries heavily rely on international

development assistance. Afghanistan is one of those countries where sustainable and regular provision of basic rights is not possible without international financial assistance.

While donors have been generous to Afghanistan, the funding has often come with strings attached. Donor funding has largely been dictated by their own strategic priorities and preferences have been given to the provinces where donors' soldiers have served. Yet, some funding has benefited almost everyone in the country apart from extremely insecure areas. Given the almost countrywide coverage of the National Solidarity Programme, donors' preferences have not substantially affected the NSP although improved coordination would have resulted in more frequent funding for all communities. Despite the NSP typically resulting in only one time financial assistance to the majority of the communities in a space of ten years, it has brought unprecedented change to Afghanistan on a scale not seen before.

Donors expect their funding to be utilised in a way that meets inclusive participation and is impact driven. In response, the Government of Afghanistan ensured the design of the NSP incorporated key elements comprising inclusive participation, empowerment of communities, non-discrimination against marginalised and vulnerable communities and transparency and accountability. The NSP has focused on structural issues to address long term development needs. The establishment of the Community Development Councils (CDCs) at the village level is a foundation that will serve as a sustainable service delivery mechanism for development work.

Since September 2014, the new Afghan government has shown stronger resolve to its obligations vis-à-vis the Afghan population by introducing the Citizens' Charter, and thereby, recognising its responsibility to progressively provide a package of so called core "services". In 2017, the Citizens' Charter will replace the National Solidarity Programme, and other National Priority Programmes intended to achieve Afghanistan's Sustainable Development Goals. The recognition of development rights under the Citizens' Charter is unprecedented and is a very bold step. However, the Afghan government continues to be critically dependent on international financial assistance to realise its vision of an Afghanistan where each community has access to basic rights.

Despite the financial limitations, the NSP has largely allowed communities to have access to basic rights, albeit with only intermittent financial assistance from the government. In secure areas, the NSP has largely allowed male community members to meaningfully participate in decision making processes, empowered them to take charge of their own future, decrease their reliance on development assistance and helped them to adhere to principles of non-discrimination to ensure all households benefit from their rights without any overt discrimination and bias. The NSP has also assisted with accountability, promoting a dialogue where community members can hold the elected accountable. The NSP is consistent with some principles of the HRBA in secure areas. On the other hand, there are some aspects that are not fully consistent with the HRBA's principles. In this respect, some

of the major findings from the research are presented below in an effort to help the next phases of the Citizens' Charter to adopt a fully-fledged HRBA.

5.1. Major findings

A major shortcoming of the NSP, according to the human rights-based approach, is that it does not recognise the human rights to water, health, education, employment and housing as a legal obligation. Yet, the NSP has reached communities in 85 percent of the country for the first time and has realised basic rights of millions.

The rights provided under the NSP also come under the mandate of other Ministries which have their own National Priority Programmes. This creates a degree of duplication, crossover of mandates, rivalries and at times confusion about who is responsible for the delivery. Nonetheless, the National Priority Programmes under other Ministries do not have national coverage and therefore, the CDCs under the NSP have become the vehicle of choice for realisation of these rights.

While the NSP realises rights of a majority of the population to water, health, education and employment, the NSP has only provided one round of financial assistance to Afghan communities. Therefore, NSP's financial assistance has been too infrequent, unpredictable and the amount insufficient for the period for which the NSP has been running. Once CDCs exhaust their initial block grants, there is a lot of uncertainty about the next round of financial assistance, if any. As a result, realisation of rights is not happening progressively and sustainably.

Additionally, neither communities nor provincial and district authorities were consulted during the design phase of the NSP. Rather, the NSP was designed by external community development experts. In other words, the design of the NSP involved a top down approach. If communities were to participate in the design and planning of the NSP, it would have resulted in improved ownership of the Programme. In the absence of involving communities in the design of the NSP, it seems the top down approach has also affected communities' understanding of the NSP, its objectives and their rights under the Programme.

Women who are elected as female representatives of the Community Development Councils often cannot have direct meetings with their male counterparts. Equally, these elected women cannot travel without a male family companion who is known as *Mahram*. The *Mahram* who is unelected often fully represents the elected women without having the democratic or electoral mandate. *Mahram*, therefore, undermines the representativeness and mandate of the elected women. The inability of women to participate fully in the work of CDCs is fatal in terms of assessing the NSP as reflecting a HRBA. However, when viewed through the lens of traditional Afghan society, although appearing as small steps to Western eyes, great gains have been made in involving women in development. Perhaps it is the case

that the inclusivity of the HRBA is overly-optimistic in traditional societies, or needs to be implemented in a way that is meaningful to local communities.

At the community level, meaningful and inclusive participation for unelected women, as envisaged by the HRBA, is not feasible. In the Afghan context, it is not culturally appropriate to have face to face interactions between male and female community members. Women cannot influence their choice of projects while men act paternalistically by choosing a project that they see as good for everyone. NSP's gender segregated approach is arguably an appropriate mechanism to have women on board at least partially instead of leaving them out altogether. Such an approach at least ensures some participation of women in development discussions than leaving them out.

Although the NSP has been the second largest development programme in the world, and by far the largest in Afghanistan, the coverage, budget and length of the programme bring their own challenges. The funding for the NSP has come entirely from the international community, and mainly from the United States. With global financial uncertainty increasing and major global emergencies emerging elsewhere, the current level of funding is neither affordable nor sustainable. As a result, the financial sustainability of the NSP, and now the Citizens' Charter, remains a very real challenge to the realisation of what the government refers to as core services.

CDCs have become project and donor driven. This has affected the institutional sustainability of the CDCs. The frequency of financial assistance to the CDCs has also negatively contributed to the institutional sustainability of CDCs. When projects are finished, CDCs' institutional sustainability tends to fade away because communities are not interested in having elections or re-elections without anything more substantive. As a result, if CDCs do not get additional funding or some basic maintenance costs, the investment of the last ten years may be under threat.

Accountability and transparency are two of the NSP's ostensible strengths, resulting in increased recognition and funding from the international community for the NSP. Rigorous accountability and transparency procedures have also resulted in social accountability of the elected members of CDCs. As a result, there is confidence among Afghan communities about the projects under the NSP and the value of funding under the Programme.

Although implementation of the NSP has continued in insecure areas, insecurity has challenged each and every aspect of the NSP, in one way or another. Insecurity does not allow normal participation in mobilisation, elections, community development planning, implementation and monitoring of projects. The focus in insecure areas stays on delivery of projects. As a result, quality of work suffers and the communities are not empowered.

5.2. Recommendations

The following recommendations are developed in view of the research and findings. These recommendations suggest ways to help the Afghan government and its donors embrace a more contextual human rights based approach under the Citizens' Charter.

5.2.1 Recommendations for the design of future phases of the Citizens' Charter

The design of the Citizens' Charter needs a more consultative approach at the national and provincial levels, allowing Community Development Councils, Provincial and District Governors to provide their inputs. Successful implementation demands inclusive design of a Programme where community needs are not only assessed and understood from the government's point of view but fully consulted with community members. Communities are not, and should not be, seen as simply recipients of development aid. Rather, they should be seen as active project participants. This will not only generate interest from the local stakeholders to participate but also promote ownership and help sustain efforts from the community in the subsequent implementation of the programme.

While the tradition of *Mahram* needs to be preserved to respect the longstanding local values, *Mahrams* should only be used for traveling purposes and not undermine the mandate conferred on the female elected members. *Mahrams* should not be allowed to deliberate on behalf of the elected women. While *Mahrams* should continue accompanying elected female women to ease mobility restrictions, however, they should not represent them.

Needs of persons with disabilities should be better integrated and practically observed. Approval of projects should be made conditional upon inclusion of disability needs. Also, a monitoring system needs to be in place to ensure that the disability needs, which have been incorporated as part of the community development planning, are implemented. A checklist along with a focal point for disability should be introduced at each CDC level.

5.2.2 Recommendation on the future role of the Community Development Councils under the Citizens' Charter

CDCs, at least in secure areas, carry out their governance functions by mobilising themselves, undertaking elections, meeting to discuss their development priorities and responding to community concerns and queries on progress and quality of work. In other words, in secure areas, the NSP has contributed positively to the establishment of functional CDCs. Nonetheless, this is not sufficient for effecting a meaningful and sustainable change in the lives of community members. Instead, economic opportunities should be created around CDCs so that the CDCs are not only functional but also economically prosperous.

5.2.3 Recommendation to donors

Inclusive, active and free participation of women faces formidable cultural challenges in Afghanistan. Although female participation has improved since the beginning of the NSP, and recognising the fact that female participation needs to further improve, donors should not rush inclusive participation. Instead, donors can encourage, as part of its programming, a more contextual and locally sensitive approach as some requirements of the HRBA are not easily applicable to conservative and post conflict societies.

Given the number of donors in Afghanistan, improved harmonisation among them is necessary to avoid duplication and wastage of resources. Donors also need to have more coherent country strategies for Afghanistan to ensure development assistance is consistent not only with each other but in line with the priorities of the Afghan government. Donor country strategies for Afghanistan should specifically contribute towards the Afghanistan National Development Strategy, and the overall development framework. This way, both the Afghan government and the international community can jointly work towards progressive realisation of rights with the available resources.

Lastly, development funds should not be provided on the basis of political agendas. Rather, funds should be allocated to respond to the collective development needs, in an equitable manner. When funds are equitably allocated to all the provinces in Afghanistan, this can help the Citizens' Charter become more aligned with the human rights-based approach. By the same token, the level of donor funding should not be influenced by the presence of their troops or military advisors in a given province.

5.3. Conclusion

Over the last four decades, Afghanistan has seen persistent conflict and civil strife. In the process, the country has lost its ability to deliver basic rights to its population. Since 2001, although Afghanistan has forged partnerships with the international community to advance its shared vision of regional and international peace and stability, the country has shown an intolerable level of dependence on donor funding. Donor fatigue and dwindling international aid could derail the country's vision of providing basic rights to its population, which can further undermine the government's legitimacy. Therefore, it is imperative Afghanistan becomes fiscally more independent to gradually fund the so called core services [which can be regarded as rights] for its population. This will also help improve the government's image among Afghans for taking responsibility for the citizens' rights. The Citizens' Charter, which will focus on new areas including improved farming technology, road to market and renewable rural energy, has the potential to create economic growth at the rural level, seems to be a first step in that direction.

Although the communities were not involved in the design phase of the Programme, the NSP has embraced a bottom up approach in implementation by involving communities in making

their own decisions about their own resources and development priorities. In secure areas, communities are increasingly aware of their rights and the state's obligations towards them. Elections and re-elections have empowered ordinary members to elect their representatives for the Community Development Councils (CDCs). The CDCs have been entrusted with financial and leadership responsibilities that entail transparency and accountability measures. As a result, CDCs' capacity has been built and communities have been empowered.

In view of the above, my research indicates that the NSP observes some of the hallmarks of the HRBA, except for the formal recognition of rights and participation of women and persons with disabilities. The extent of application of other principle such as participation, empowerment, non-discrimination and transparency "varies according to the level of" insecurity, capacity levels and conservative traditions. Also, inclusivity of the HRBA is rather ambitious in countries with insecurity and conservative traditions. Perhaps, in these situations, the HRBA needs to be implemented consistent with the local contexts.

6. References

6.1. Treaties

Arab Charter on Human Rights

Charter of the United Nations

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Universal Declaration of Human Rights (UDHR)

6.2. Parliamentary and government materials

Afghanistan National Development Strategy 2008 – 13, Islamic Republic of Afghanistan, United Nations Development Programme

<www.undp.org.af/publications/KeyDocuments/ANDS_Full_Eng.pdf>

Decree No.45 by the President of the Islamic Republic of Afghanistan, Independent Directorate of Local Governance and Ministry of Rural Rehabilitation and Development, Policy for Improving Governance and Development in Districts and Villages, 3 (4) (2013) <http://idlg.gov.af/Content/Media/Documents/IDLG_April_2013_Issue3052013162843327553325325.pdf>

Government of the Islamic Republic of Afghanistan, Concept Note: Citizens' Charter September 2015

Government of the Islamic Republic of Afghanistan, Realising Self Reliance, Commitment to Reforms and Renewed Partnerships (London Conference on Afghanistan, 2014

Islamic Republic of Afghanistan, Ministry of Foreign Affairs, Afghanistan National Development Strategy < <http://mfa.gov.af/>>

Islamic Republic of Afghanistan, Ministry of Rural Rehabilitation and Development, General Procurement Notice (April, 2016) < <http://mrrd.gov.af/en>>

The Constitution of Afghanistan (2004)

6.3. United Nations Generally Assembly Resolutions

United Nations General Assembly Res 2200, UN GAOR, 21st Sess, Supp No 16 UN Doc (1966)

United Nations General Assembly Res A/6316 - resolution adopting the ICCPR (1966)

United Nations General Assembly Res /RES/41/128, *Declaration on Right to Development*, 4 December 1986, 97th plenary meeting

United Nations General Assembly Res 48/121, of 1994

United Nations General Assembly Res 60/1, A/Res/60/1 World Summit Outcome (2005)

United Nations General Assembly Res 65/1, UN Doc A/RES/65/1 *Millennium Development Goals Summit Outcome Document* (Sept. 17 2010)

6.4. Books and chapters in books

Abdulla Hi Ah Med An-Na‘Im *Values Transcending Imperialism: Human Values and Global Citizenship, Self-Determination, and Citizenship’ The Tanner Lectures on Human Values* (University of California, Berkeley, 2010)

Adam McBeth Justine Nolan and Simon Rice *The International Law of Human Rights* (Melbourne, Oxford University Press, 2011)

Adamantia Pollis and Peter Schwab *Human Rights: Cultural And Ideological Perspectives* (New York, Praeger Publishers, 1979)

Amartya Sen *Development as Freedom* (Anchor Books, New York, 2000)

Bhikhu Parekh *Non-Ethnocentric Universalism, in Human Rights in Global Politics* (Cambridge University Press, Tim Dunne & Nicholas J Wheeler eds, 1999)

Daniel Moeckli Sangeeta Shah and Sandesh Sivakumaran *International Human Rights Law*, (2nd ed, Oxford University Press, Oxford, 2014)

Glanville Williams *Learning the Law* (12th edition, London: Sweet & Maxwell, 2002)

Hans J Morgenthau *In Defense of the National Interest* (New York, Alfred A Knopf, 1951)

Hans J Morgenthau *Politics among Nations: The Struggle for Power and Peace* (5th ed, New York, Alfred A Knopf, 1973)

Jack Donnelly “Human Rights and Asian Values: A Defense of "Western" Universalism” in Joanne R Bauer & Daniel A Bell (eds) *The East Asian Challenge For Human Rights* (Cambridge: Cambridge University Press, 1999)

Jim Ife *Human Rights from Below, Achieving rights through community development* (Cambridge University Press, Cambridge, 2009)

Ian Dobinson and Francis Johns “Qualitative Legal Research’ in M McConville & W Hong Chui (eds) *Research Methods for Law* (Edinburgh University Press, Edinburgh, 2007)

Karin Arts *Integrating human rights into development cooperation: the case of the Lomé Convention* (Kluwer Law International Hague, Netherlands, 2000)

Magdalena Sepúlveda Carmona *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Hart/Intersentia, Antwerp, 2003)

Malcolm Langford, Andy Sumner and Alicia Yamin *The Millennium Development Goals and Human Rights* (Harvard University, Massachusetts, 2015)

Manisuli Ssenyonjo *Economic, Social and Cultural Rights in International Law* (Hart Publishing, Portland, 2009)

Mike McConville and Wing Hong Chui *Research Method for Law* (1st edition, eBook, 2007)

Mike McConville & W Hong Chui (11th ed, Edinburgh, 2007)

Rebecca Wallace, *International Law* (5th edition, Sweet & Maxwell, London, 2005)

Richard Rorty “*Human rights, rationality, and sentimentality*” in *human rights: The Oxford Amnesty Lectures*, eds Stephen Shute and Susan Hurley (New York, Basic Books, 1993)

Stephanie Ahmad, Alexander Benard, Jason Berg, Ben Joseloff, Max Rettig, Anne Stephens Lloyd and Eli Sugarman *An Introduction to the Law of Afghanistan* (Third edition, Palo Alto, California, 2011)

6.5. Journal Articles

Andrew Beath, Fotini Christia and Ruben Enikolopov “The National Solidarity Programme: Assessing the Effects of Community-Driven Development in Afghanistan” *International Peacekeeping* (2015) 22 (4) 302

Barbara Stark “Economic Rights in the United States and International Human Rights Law; towards an entirely new strategy” (1992-1993) 44 *Hastings Law Journal* 79

Cees Flinterman “Vienna Declaration and Programme of Action: 20 Years Later” (2013) 31(2) *Netherlands Quarterly of Human Rights* 129

Clarence J Dias “The Rights Way to Development: Challenges and Opportunities” (2007) 34 *Development Bulletin*

Dan Banik “Support for human rights-based development: reflections on the Malawian Experience” (2010) 14 (1) *The International Journal of Human Rights* 34

Dianne Otto "Everything is Dangerous: Some Post Structural Tools for Rethinking the Universal Knowledge Claims of Human Rights Law" (1999) 5 Australian Journal of Human Rights 1

Dianne Otto "Rethinking The "Universality" Of Human Rights Law" (1997) Columbia Human Rights Law Review 1

Fons Coomans "The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights" (2011) 11 Human Rights Law Review 1

Hannah Miller "*From 'rights-based' to 'rights-framed' approaches: a social constructionist view of human rights practice*" (2010) 14 (6) The International Journal of Human Rights 915

Hisayo Katsui and Jukka Kumpuvuori "Human Rights-Based Approach to Disability in Development in Uganda: A Way to Fill the Gap between Political and Social Spaces?" (2008) 10 (4) Scandinavian Journal of Disability Research 227

Hoffmann Florian "Shooting Into The Dark - Toward A Pragmatic Theory Of Human Rights' Activism" (2006) 41 Texas International Law Journal 403

Jack Donnelly "The Relative Universality of Human Rights" (2007) 29 Human Rights Quarterly 281

Jack Donnelly "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights" (1982) 76 (2) The American Political Science Review 303

Jan Vandemoortele and Enrique Delamonica "Taking the MDGs Beyond 2015: Hasten Slowly" (2010) IDS Bulletin 41

Kalpana V Jawale "Methods of Sampling Design in the Legal Research: Advantages and Disadvantages" (2012) 2 (6) International Interdisciplinary Research Journal 183

Lee Epstein and Gary King "Empirical Research and the Goals of Legal Scholarship The Rules of Inference" (2002) 69 (1) University of Chicago Law Review 1

Mac Darrow "The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post-2015 Development Agenda" (2012) 15 Yale Human Rights and Development Journal 55

Michael K Addo "Justiciability of Economic, Social and Cultural Rights" (1988) 14 Commonwealth Law Bulletin 1425

Michael Goodhart "Origins and Universality in the Human Rights Debates: Cultural Essentialism and the Challenge of Globalisation" (2003) 25 Human Rights Quarterly 935

Michael Goodhart “Neither Relative nor Universal: A response to Donnelly” (2008) 30 Human Rights Quarterly 183

Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon & Ian Seiderman “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights” (2012) 34 Human Rights Quarterly 1084

Padideh Ala'i “A Human Rights Critique of the WTO: Some Preliminary Observations” (2001) 33 George Washington International Law Review 537

Paul J Nelson “Human Rights, the Millennium Development Goals, and the Future of Development Cooperation” (2007) 35 (12) World Development 2041

Philip Alston “The rights framework and development assistance” (1995) 34 Development Bulletin 1

Philip Alston and Gerard Quinn “The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights” (1987) 9 Human Rights Quarterly 156

Philip Harvey “Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously” (2001-2003) 33 Columbia Human Rights Law Review 363

Sakiko Fukuda-Parr and David Hulme (2011) “International Norm Dynamics and the “End of Poverty”: Understanding the Millennium Development Goals. Global Governance: A Review of Multilateralism and International Organizations” (2011) 17 (1) Global Governance 17

Sans Hans Otto “Development and Human Rights: the necessary but partial integration of Human Rights and Development” (2000) 22 Human Rights Quarterly 734

The Executive Board American Anthropological Association “Statement on Human Rights” (1947) 49 American Anthropological 539

Tom Farer "The Hierarchy of Human Rights." (1992) 8 American University International Law Review 115

Valerie Miller, Lisa VeneKlasen and Cindy Clark “Rights-based Development: Linking Rights and Participation — Challenges in Thinking and Action” (Jan 2005) 36 (1) Institute of Development Studies Bulletin 33

Walter J Landry “The Ideals and Potential of the American Convention on Human Rights” (1975) 4 Human Rights 395

6.6. Reports

Alasdair Cochrane, *In Defence of Traditional Theories of Human Rights*, Centre for Political Theory and Global Justice, Working Paper Series (2013)

<https://www.sheffield.ac.uk/polopoly_fs/1.277288!/file/CochraneInDefenceofTraditionalTheoriesofHumanRights.pdf>

Beath Andrew, Christia Fotini, Enikolopov Ruben *Randomized impact evaluation of Afghanistan's national solidarity programme* (Washington DC, World Bank, July 2013)

<<http://documents.worldbank.org/curated/en/2013/07/18273450/randomized-impact-evaluation-afghanistans-national-solidarity-programme>>

Clarence J Dias and Scott Leckie, *Human Rights Council of Australia the Rights Way to Development: Challenges and Opportunities* Symposium Papers - A Human Rights Approach to Development (1997) <

http://hdr.undp.org/sites/default/files/clarence_j_dias_scott_leckie.pdf>

Celestine Nyamu-Musembi and Andrea Cornwall, *What is the "rights-based approach" all about? Perspectives from international development agencies* (Institute of Development Studies, Working Paper 234, 2004)

Felix Kirchmeier, *the right to development, where do we stand?* 'Dialogue on Globalisation' (Friedrich Ebert Stiftung, Occasional Paper # 2, 2006)

German Government, Federal Ministry for Economic Cooperation and Development (BMZ) *A Human Rights Based Approach to Disability in Development* (2012,

Metzgerdruck, Berlin) Federal Ministry for Economic Cooperation and Development <<https://www.cbm.org/>>

Kenneth Katzman, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy* (Congressional Research Service, 2011) US Department of State <

<http://fpc.state.gov/documents/organization/174244.pdf>>

Ministry of Economy, Islamic Republic of Afghanistan, *Millennium Development Goals Report 2012* (2013)

<www.af.undp.org/content/dam/afghanistan/docs/MDGs/Afghanistan%20MDGs%202012%20Report.pdf>

Paula Dobriansky, *U.S. Human Rights Policy: An Overview*, U.S. Dep't Of State, Current Pol'y No. 1091 (1988)

Philip Alston, *A Human Rights Perspective on the Millennium Development Goals* Background paper for the UN Millennium Project Task Force on Poverty and Economic Development (UN Millennium Project, New York, 2004)

Report No: 54540-AF, The World Bank, *Third Emergency National Solidarity Project* (2010) The World Bank <
http://siteresources.worldbank.org/INTAFGHANISTAN/Resources/Afghanistan-Reconstructional-Trust-Fund/342296-1313436195294/P117103-National_Solidarity_III-EPP.pdf>

Report No: 80177-AF (2014) The World Bank, *Afghanistan Reconstruction Trust Fund Project Appraisal Document* (March 25, 2014) Afghanistan Reconstruction Trust Fund <
http://www.artf.af/images/uploads/PAD_for_KMDP.pdf>

Report No: 84660-AF The World Bank, *Afghanistan Reconstruction Trust Fund Project Appraisal Document* (March 4, 2014) Afghanistan Reconstruction Trust Fund <
http://www.artf.af/images/uploads/PAD_for_CASA_CSP.pdf>

Project ID Number, P155497 Islamic Republic of Afghanistan General Procurement Notice *Citizens' Charter Elements' Period* (14, April 2016, Kabul, Afghanistan) <
www.devbusiness.com>

Seventh report of session (2009/10) House of Commons Defence Committee, *The Comprehensive Approach: the point of war is not just to win but to make better peace* (The Stationery Office Limited, House of Commons. 2009/10) United Kingdom Parliament <
<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmdfence/224/224.pdf>>

Siobhán McInerney-Lankford Sano Hans-Otto *Human Rights Indicators in Development* (World Bank, Washington DC, 2010)

Swedish Ministry of Foreign Affairs *Human Rights in Swedish Foreign Policy* (Government Communication, Stockholm, 2003)

Swedish Ministry of Foreign Affairs *Change for Freedom: Policy for democratic development and human rights in Swedish development cooperation, 2010–2014* (Swedish Ministry of Foreign Affairs, Stockholm, 2010) Government Offices of Sweden <
<http://www.government.se/>>

Sultan Barakat, *Mid-term Evaluation Report of the National Solidarity Programme (NSP)*, Afghanistan. York, U.K. Post-War Reconstruction and Development Unit (PRDU) From Subjects to Citizens: Local Participation in the National Solidarity Programme. Kabul: Afghanistan Research and Evaluation Unit (University of York, Boesen, 2006)

The National Solidarity Program *Monthly Program Report (21st April to 21st May 2015)* <
<http://www.nspafghanistan.org/default.aspx?sel=30>>

The World Bank *Assessment of Strategic Issues and Recommendations for Future Directions Technical Assistance Paper National Solidarity Program: Assessment Of Strategic Directions* (2015 < http://www-wds.worldbank.org/external/default/WDSP/SAR/2015/06/02/090224b082eea8e5/2_0/Rendered/PDF/NSP0Strategic0Directions0TA0Paper.pdf>

Victorian Equality Opportunity and Human Rights Commission (VEOHR) *From Principle To Practice: Implementing The Human Rights-Based Approach In Community Organisations* (Victorian Equal Opportunity and Human Rights Commission, Super Print, Victoria, 2012) <<http://www.humanrightscommission.vic.gov.au/>>

6.7. United Nations Documents and reports

Office of the United Nations High Commissioner for Human Rights *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies* (Geneva, June 2012)

Report of the Open-ended Working Group to Consider *Options Regarding the Elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on Its Third Session*, U.N. ESCOR, Comm'n on Hum. Rts. 62d Sess., 78, 82, U.N. Doc. E/CN.4/2006/47 (2006)

United Nations Children's Emergency Fund "Education in Afghanistan" (Factsheet, November 2011) <http://www.unicef.org/infobycountry/files/ACO_Education_Factsheet_-_November_2011_.pdf>

United Nations, Committee On Economic, Social And Cultural Rights *Report On The Twenty-Second, Twenty-Third And Twenty-Fourth Sessions* (Economic and Social Council, Annex 1, 2001) <<http://www.un.org/documents/ecosoc/docs/2001/e2001-22.pdf>>

United Nations *Committee on Economic, Social and Cultural Rights considers Report of Afghanistan* (2010) Relief Web Net <reliefweb.int/report/afghanistan/committee-economic-social-and-cultural-rights-considers-report-afghanistan>

United Nations Development Programme *Human Development Report* (2000) <hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf>

United Nations Development Programme (UNDP) *Millennium Development Goals* <<http://www.un.org/millenniumgoals/bkgd.shtml>>

United Nations Development Programme *Millennium Development Goals Status in Afghanistan* <www.af.undp.org/content/afghanistan/en/home/library/mdg.html>

United Nations Development Programme *Opening Doors to Opportunity: Afghanistan's Millennium Development Goals* (2004)
<www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Afghanistan/Afghanistan_MDGReport_2004.pdf>

United Nations Development Programme "Promoting Participation of Disadvantaged Groups in Asia and Asia Pacific" (2007) <<http://hrbaportal.org/>>

United Nations Development Programme "Local Governance, peace building and state building in post-conflict settings" "(2010) The United Nations Capital Development Fund
<<http://www.uncdf.org/gfld/docs/post-conflict.pdf>>

United Nations Development Programme "Sustainable Development Goals (SDGs) Time For Global Action" (2015) <<http://www.un.org/sustainabledevelopment/sustainable-development-goals/>>

United Nations Education, Scientific and Cultural Organisation, International Literacy Data 2014 <<http://www.uis.unesco.org/literacy/Pages/literacy-data-release-2014.aspx>>

United Nations, Factsheet (2010) UN Secretary-General Ban Ki-moon, statement issued by UN Department of Public Information
<http://www.un.org/millenniumgoals/pdf/mdg_summit_factsheet.pdf>

United Nations Office of the High Commissioner for Human Rights *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies* (Geneva, June 2012)

United Nations Office of the High Commissioner for Human Rights Economic, Social and Cultural Rights, *Handbook for National Human Rights Institutions*, Professional Training Series Number 12 (New York, 2006)

United Nations Office of the High Commissioner for Human Rights *Ratification Status by Country/Afghanistan*
<http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=en>

United Nations Office of the High Commissioner for Human Rights *Fact Sheet No (33) Frequently Asked Questions on Economic, Social and Cultural Rights*
<www.refworld.org/docid/499176e62.html>

United Nations Office of the High Commissioner for Human Rights *Frequently Asked Questions On A Human Rights-Based Approach to Development Cooperation* (2006)
<www.ohchr.org/Documents/Publications/FAQen.pdf>

United Nations Office of the High Commissioner for Human Rights *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights* <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-41_en.doc>

United Nations Office of the High Commissioner for Human Rights *Status of Ratifications*, for more information please refer to <http://indicators.ohchr.org/>; German Institute for Human Rights, *How many states have ratified human rights treaties?* <www.institut-fuer-menschenrechte.de/en/topics/development/frequently-asked-questions/4-how-many-states-have-ratified-human-rights-treaties/>

United Nations Office of the High Commissioner for Human Rights *the 2030 Agenda for Sustainable Development* <www.ohchr.org/Documents/Issues/MDGs/Post2015/TransformingOurWorld.pdf>

United Nations Office of the High Commissioner for Human Rights *Claiming the Millennium Development Goals – a human rights-based approach*, UN Doc HR/PUB/07/3

United States of America, Comments submitted on *Report of the Open Ended Working Group on the Right to Development*, UN ESCOR, Commission on Human Rights, 57th Session, UN Doc E/CN4/2001/26 (2001)

Urban Jonsson *A Human Rights Approach to Development Programming* (United Nations Children's Fund, New York, 2003) <<http://www.unicef.org/>>

United Nations Office for Coordination of Humanitarian Assistance (2015) *Humanitarian Needs Overview Humanitarian Response* <www.humanitarianresponse.info>

United Nations Office of the High Commissioner for Human Rights (2015), *Human Rights and the 2030 Agenda for Sustainable Development* <www.ohchr.org/Documents/Issues/MDGs/Post2015/TransformingOurWorld.pdf>

United Nations Office for Coordination of Humanitarian Assistance (2016) *Humanitarian Needs Overview Humanitarian Response* <www.humanitarianresponse.info>

United Nations Portal on HRBA “the human rights-based approach to development cooperation – towards a common understanding across agencies” <<http://hrbaportal.org/>>

United Nations *Second to fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant* (Afghanistan E/C.12/AFG/2-4, 2007) <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=AFG&Lang=EN>

United Nations *The Right to Development at a glance*
<www.un.org/en/events/righttodevelopment/pdf/rtd_at_a_glance.pdf>

Vienna Declaration and Programme of Action (1993) Report of the World Conference on Human Rights, Vienna UN Doc A/CONF.157/23 (1993)

6.8. Internet resources

Adam Etinson “Human Rights Moral or Political? A Proposal for Oxford University Press” (2002) <www.adametinson.com/Human%20Rights%20-%20Moral%20or%20Political%20-%20Volume%20Outline.pdf>

Afghanistan Research and Evaluation Unit (AREU) “Does Women’s Participation in the National Solidarity Programme Make a Difference in their Lives? A Case Study in Parwan Province” (2010) <<http://www.areu.org.af/>>

Agency Coordinating Body for Afghan Relief and Development (ACBAR) “The Netherland Embassy’s fund” <<http://www.acbar.org/page/13.jsp?title=Donor-Information>>

Alice Donald “A Guide to Evaluating Human Rights-Base Interventions in Health and Social Care, Human Rights and Social Justice” (Research Institute, London Metropolitan University, 2012) <www.humanrightsinhealthcare.nhs.uk/>

Amnesty International “Afghanistan 2015/2016”
<<https://www.amnesty.org/en/countries/asia-and-the-pacific/afghanistan/report-afghanistan/>>

Amnesty International “Economic, Social and Cultural Rights: Questions and Answers Adapted from Human Rights Education” The Fourth R 9:1(1998) <<http://www.pdhre.org/>>

Anastasiya Hozyainova “Sharia and Women’s Rights in Afghanistan” Special Report 347 (May 2014) United States Institutes of Peace
<https://www.usip.org/sites/default/files/SR347-Sharia_and_Women%E2%80%99s_Rights_in_Afghanistan.pdf>

Andrea L Hoshmand “Provincial Reconstruction Teams in Afghanistan” University of Maryland, School of Public Policy <<http://faculty.publicpolicy.umd.edu/>>

Anthony H Cordesman and Arleigh A Burke “The U.S Cost of The Afghan War” FY2002-FY2013 (Centre for Strategic and International Studies, 2012) Centre for Strategic and International Studies
<http://csis.org/files/publication/120515_US_Spending_Afghan_War_SIGAR.pdf>

Bertrand G Ramcharan “Human Rights and The SDGs: A Side-Lined Priority? Future United Nations Development System” (Ralph Bunche Institute for International Studies, Graduate Center, Briefing 31, September 2015)
<http://futureun.org/media/archive1/briefings/FUNDS_Brief31_Human_Rights_SDGs_July2015.pdf>

Claire Melamed and Lucy Scott “After 2015: progress and challenges for development” (2011) Overseas Development Institute <<http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7061.pdf>>

Clarence J. Dias and Scott Leckie "Human Rights Council of Australia “the Rights Way to Development: Challenges and Opportunities” Symposium Papers - A Human Rights Approach to Development (1997)
<http://hdr.undp.org/sites/default/files/clarence_j_dias_scott_leckie.pdf>

Cormac Russell “From Needs to Assets: Charting a Sustainable Path Towards Development in Sub-Saharan African Countries” (Global Sustainable Development Conference, Practical Action Publishing, 2009) Asset Based Community Based Institute<<http://www.abcdinstitute.org/publications/downloadable/>>

Dorothea Anthony “*Indivisibility of Human Rights: A Theoretical Critique*” (2010)<<https://www.uts.edu.au/sites/default/files/law-form-dorothea-anthony.pdf>>

Douglas Keh Country Director United Nations Development Fund “Afghanistan and its Sustainable Development Goals” (Pazhwad News Agency, 27 September 2015) <Pajhwok News Agency <<http://www.pajhwok.com/en/opinions/afghanistan-and-sustainable-development-goals>>

Elisabeth Prammer and André Martinuzzi “The Millennium Development Goals (MDGs) and the Post-2015 Debate” (European Sustainable Development Network, Case Study No. 13, 2013) <www.SD-NETWORK.eu>

Ghazala Mansuri and Vijayendra Rao “Evaluating Community-Based and Community-Driven Development: A Critical Review of the Evidence” (September 2003) The World Bank < <http://siteresources.worldbank.org/>>

Global Centre for Public Service Excellence “Citizen Engagement in Public Service Delivery” (22 February 2016) The World Bank
<<http://blogs.worldbank.org/category/tags/elite-capture>>

Hisayo Katsui & Richard Wamai “Human Rights-Based Approach to Disability and Health in Development Cooperation: Perspectives from the South” the Tokyo Foundation (2010)
<<http://www.tokyofoundation.org/en/>>

Human Rights Council of Australia Symposium Papers *A Human Rights Approach to Development* (1995) <<http://www.hrca.org.au/wp-content/uploads/2008/05/symposium.pdf>>

International Human Rights Network (IHRN) “*Human Rights-Based Approaches to Development*” (Terre des hommes, 2005), Terre des homme <http://tdh-cp-org.terredeshommes.hu/rcpp_content/country_pages/eu/hrba_overview_ihrn.pdf>

International Women’s Rights Action Watch (IWRAW) “Building Capacity for Change: Training Manual on the Convention on the Elimination of all Forms of discrimination against Women” (Faculty of Law, University of Hong Kong, 2001) <<http://www.law.hku.hk/hrportal/wp-content/uploads/file/Session5.pdf>>

Islamic Republic of Afghanistan Ministry of Rural Rehabilitation and Rural Development (MRRD), The National Solidarity Programme (NSP) <<http://www.nspafghanistan.org/default.aspx?sel=109>>

Islamic Republic of Afghanistan Ministry of Rural Rehabilitation and Rural Development (MRRD), The Operational Manual VII, The National Solidarity Programme (NSP) <<http://www.nspafghanistan.org/default.aspx?sel=16>>

Jakob Kirkemann Boesen and Tomas Martin “Applying a Rights-Based Approach – An Inspirational Guide for Civil Society Child Rights” International Networks (The Danish Institute for Human Rights, 2007) < https://www.crin.org/en/docs/dihr_rba.>

Jennifer Brick “Investigating the Sustainability of Community Development Councils in Afghanistan” (Afghanistan Research and Evaluation Unit, Kabul, 2008) <<http://jen.murtazashvili.org/wp-content/uploads/2013/05/CDC-Sustainability-Final-Report-AREU-FINAL.pdf>>

Louise Arbour *United Nations High Commissioner for Human Rights (Geneva, 14 January 2005)* < http://www.urbancentre.utoronto.ca/pdfs/elibrary/Arbour_Charity-Entitlement_.pdf >

Lydia Poole “Afghanistan: Tracking Major Resource Flows, 2002–2010 Global Humanitarian Assistance” (Briefing Paper, January 2011) <<http://www.globalhumanitarianassistance.org/wp-content/uploads/2011/02/gha-Afghanistan-2011-major-resource-flows.pdf>>

Lutheran World Federation “Rights-Based Approach A Reference Material Applying RBA in the Project Cycle” (Uganda Programme, October, 2011) Danish Mission Council Development Department <<http://www.dmcdd.org/>>

Maxi Ussar “Integration of the human rights-based approach into development policies and programmes: A guide for the New EU Member States” (Minority Rights Group International, London/Bodapest, 2011) Minority Rights Group <<http://minorityrights.org/>>

Michael Krennerich “Economic, social and cultural rights - from hesitant recognition to extraterritorial applicability” (2013) <<http://menschenrechte.org/wp-content/uploads/2013/11/Article-by-Michael-Krennerich.pdf>>

Mohammad Lateef Totakhail Willy Brandt School of Public Policy “Foreign Aid and Economic Development in Afghanistan Analysis of German assistance to Afghanistan with reference to the Paris Declaration on Aid Effectiveness” (2011) The Atlantic Community <<http://www.atlantic-community.org/app/webroot/files/articlepdf/Foreign%20Aid%20and%20Economic%20Development%20in%20Afghanistan.pdf>>

Natasha Mack, Cynthia Woodson Kathleen M. Macqueen, Greg Guest & Emily Namey “Qualitative Research Methods: A Data Collector’s Field Guide” (2011) Family Health International <<http://www.fhi360.org/sites/default/files/media/documents/Qualitative%20Research%20Methods%20-%20A%20Data%20Collector's%20Field%20Guide.pdf>>

Government of New Zealand, Foreign Affairs and Trade “Our Approach to Aid” <<https://www.mfat.govt.nz/en/aid-and-development/our-approach-to-aid/>>

Organisation of Islamic Cooperation “Population & Housing Census in Afghanistan” <<http://www.oicstatcom.org/imgs/news/image/831-s2-afghanistan-en.pdf>>

Oxfam “whose aid it is anyway? Politicising aid in conflict and crisis” 145 Briefing Paper (10 February 2011) < https://www.oxfam.org/sites/www.oxfam.org/files/bp145-whose-aid-anyway-100211-en_0.pdf>

Oxfam America “Challenges and Opportunities of Implementing a Rights-based Approach to Development: An Oxfam America Perspective” (Northern Relief and Development NGOs, July 2-4, 2001, Balliol College, Oxford)

Peter Kirchsclaeger “Universality of Human Rights” (2010) <theewc.org/uploads/files/Universality%20of%20Human%20Rights%20by%20Peter%20Kirchsclaeger2.pdf>

Philip Alston “A Human Rights Perspective on the Millennium Development Goals” Background paper for the UN Millennium Project Task Force on Poverty and Economic Development (UN Millennium Project, New York, 2004)

Project ID Number, P155497 Islamic Republic of Afghanistan “General Procurement Notice Citizens’ Charter Elements’ Period” (Kabul, Afghanistan, 14 April 2016)
<www.devbusiness.com>

Ramona Biholar “Challenging the Barriers to real equality: Transformative Equality” (June, 2014) < <http://www.parlamericas.org/uploads/documents/article-ramona-biholar-en.pdf>>

Save the Children in Afghanistan “Fact Sheet on Afghanistan” (2009)
<<http://www.savethechildren.org/>>

Selim Jahan “Millennium Development Goals and Human Rights: Analytical and Process Linkages, Practical work and UNDP” (2004)
<www.cihc.org/members/resource_library_pdfs/2_Law_and_Protection/2_6_Rights_based_Assistance/HR_approach_to_Poverty_Reduction.pdf>

Special Inspector General for Afghanistan Reconstruction (SIGAR) “Afghanistan’s National Solidarity Programme has reached thousands of Afghan communities but faces challenges that could limit outcome” (March 2011)
<<https://www.sigar.mil/pdf/audits/2011-03-22audit-11-08.pdf> >

Sippi Azarbaijani-Moghaddam “A Study of Gender Equity through the National Solidarity Programme’s Community Development Councils” (2012)
<<http://landwise.resourceequity.org/record/1873>>

The Asia Foundation “Insecurity, Remoteness pose steep challenges in surveying Afghanistan” (November 18 2015) < <http://asiafoundation.org/>>

The Afghanistan Reconstruction Trust Fund < visit <http://www.artf.af/>>

The World Bank “Country Summary Brief – Afghanistan” (22 June 2015)
<<http://siteresources.worldbank.org/>>

The World Bank “CDD and Elite Capture: Reframing the Conversation” Social Development How to Series Vol 3 Washington DC (February 2008) The World Bank
<<http://www-wds.worldbank.org/>>

Thomas Pogge “Global Justice and the First UN Millennium Development Goal: A Cause for celebration?” (11 September, 2003) International Labour Organisation
<<http://www.ilo.org/global/lang--en/index.htm>>

United States Department of State “Human Rights in Brief” Bureau of International Information Programs (2006)

<http://seoul.usembassy.gov/uploads/1w/3K/1w3KgCdDpwKHNdsHX_ARmA/Human-Rights-in-Brief.pdf>

United States Institute of Peace “The US Experience with the Provincial Reconstruction Teams” (2005) < <https://www.usip.org/sites/default/files/sr152.pdf>>

United States Institute of Peace “Lessons from Afghanistan’s History for the Current Transition and Beyond” (2012) <www.usip.org/sites/default/files/SR314.pdf>

United Kingdom Interagency Group on Rights Supported by ActionAid & CARE International “Rights based approaches and Humanitarian Interventions in Conflict Situations: A Learning and Discussion Document” (March 2009) < <http://conflict.care2share.wikispaces.net/Rights+Based+Approach>>

University of Minnesota, Human Rights Centre “Circle of Rights, Economic Social and Cultural Rights Activism: A Training Resource”
<<http://www1.umn.edu/humanrts/edumat/IHRIP/circle/toc.htm>>

Yemak Reza, Yemak, Gan Fun Chen Delice Celebrating ten years of the National Solidarity Program (NSP): a glimpse of the rural development story in Afghanistan (Washington DC, World Bank 2013)
<documents.worldbank.org/curated/en/2013/01/18427935/celebrating-ten-years-national-solidarity-program-nsp-glimpse-rural-development-story-afghanistan>

6.9. Newspapers/magazines and web blogs

Afghanistan Times “Italy to donate € 120m to Afghan development projects” (Online ed, 20 April 2016 < <http://afghanistantimes.af/italy-to-donate-e120m-to-afghan-development-projects/>>

CNBC “Afghanistan is on the brink after the US invests \$100 billion” (Online ed, February 2016) < <http://www.cnn.com/2016/02/03/afghanistan-is-on-the-brink-after-us-invests-100-billion.html>>

George Packer “Afghanistan’s Theorist-In-Chief” *the New Yorker* (Online ed, July Issue 2016) < <http://www.newyorker.com/magazine/2016/07/04/ashraf-ghani-afghanistans-theorist-in-chief>>

High Beam Research “5 NSP workers kidnapped in Maidan Wardak” (Online ed, July 2014) <<https://www.highbeam.com/doc/1G1-373322669.html>>

Jonathan Russell The London School of Economics “Human Rights: The Universal Declaration vs The Cairo Declaration” <blogs.lse.ac.uk/mec/2012/12/10/1569>

Pajhwok News Agency “6 NSP workers killed, MRRD slams incident” (Online ed, August 2013) < <http://www.pajhwok.com/en/2013/08/27/6-nsp-workers-killed-mrrd-slams-incident>>

Reuters “Donors offer \$ 16 billion Afghan aid at Tokyo conference” (Online ed, July 8, 2012) < <http://in.reuters.com/article/afghanistan-aid-idINDEE86700820120708>>

The New York Times “U.S. Identifies Vast Mineral Riches in Afghanistan” (Online ed, June 2010) <www.nytimes.com/2010/06/14/world/asia/14minerals.html?_r=0>

The Afghanistan Reconstruction Trust Fund <<http://www.artf.af/>>

Tolo News “Ghani Looks to Expedite ID Card Rollout, Improve Program's Public Image” (Online ed, July 2015) < <http://www.tolonews.com/>>

7. Annexes

7.1. Annex One



HUMAN ETHICS COMMITTEE

Secretary, Lynda Griffioen
Email: human-ethics@canterbury.ac.nz

Ref: HEC 2015/17

23 March 2015

Sulaiman Sarwary
School of Law
UNIVERSITY OF CANTERBURY

Dear Sulaiman

The Human Ethics Committee advises that your research proposal “Integrating a human rights based approach into development work” has been considered and approved.

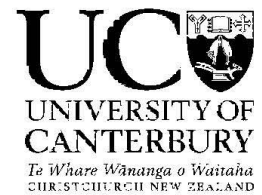
Please note that this approval is subject to the incorporation of the amendments you have provided in your email of 15 March 2015.

Best wishes for your project.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. MacDonald'.

Lindsey MacDonald
Chair
University of Canterbury Human Ethics Committee



HUMAN ETHICS COMMITTEE

Secretary, Rebecca Robinson
Telephone: +64 03 364 2987, Extn 45588
Email: human-ethics@canterbury.ac.nz

Ref: HEC 2015/17 Amendment 1

13 June 2016

Sulaiman Sarwary
School of Law
UNIVERSITY OF CANTERBURY

Dear Sulaiman

Thank you for your request for an amendment to your research proposal “Integrating a human rights based approach into development work” as outlined in your email dated 8th June 2016.

I am pleased to advise that this request has been considered and approved by the Human Ethics Committee.

Yours sincerely

R. Robinson
pp.

Jane Maidment
Chair, Human Ethics Committee

7.2. Annex Two

Base questions for the field work

The following presents the base questions. Presentation of the questions to each interviewee depended on their role, seniority and at times, capacity. For example, while the more theoretical and conceptual questions were put to the Senior Government officials and staff of Facilitating Partners, the questions were simplified and put in more easy to understand language to community members and some of the junior staff in the field.

- a. Please briefly introduce yourself and your role with the National Solidarity Programme (NSP).
- b. How do you see NSP projects?
- c. Do you see project participants as beneficiaries or rights holders? Please explain.
- d. How do communities see the projects under the NSP? As aid or as their entitlements?
- e. How are project participants involved in the funds and subsequent project implementation?
- f. Do project participants participate in the decision making process that affect their lives? Please give examples and explain.
- g. Do women, marginalised and vulnerable groups also take part in the decision making process? If yes, please state how.
- h. Where there are separate meetings, do you think these separate meetings can give a meaningful participation opportunity for women?
- i. Do you think the money is spent in an accountable and transparent manner? If yes, please explain how by giving specific examples, if possible.
- j. Do you monitor your projects to ensure they are consistent with human rights principles?
- k. Are there are any donor requirements on integrating human rights based approach in development work? Do you think the design of the NSP is consistent with human rights principles? Do you think donors have preference when it comes to allocation of funds for development needs? Does this represent a problem?¹
- l. What are some of the practical challenges in relation to integrating human rights-based approach in development work?
- m. What are some of the factors constraining human rights-based approaches?

¹ Depending on the role of interviewees, only some of these questions were put to them.

7.3. **Annex Three**

List of interviewees

a. Ministry of Rural Rehabilitation and Development (MRRD), The National Solidarity Programme (NSP) – Kabul based staff

1. Former Executive Director – Mr Abdul Rahman Ayubi
2. Acting Executive Director – Mr Rasul Rasuli
3. NSP Programming and Policy Advisor – Brigitta Bode
4. NSP Senior Operations’ Advisor – Jovitta Thomas

b. Other Kabul based interviews

5. Interviewee 1
6. Interviewee 2
7. Interviewee 4
8. Interviewee 8
9. Interviewee 12

c. Badakhshan province

10. Community Development Council – KISHM – Focus Group Discussion (FGD)
11. Community Development Council – ARGO District FGD 2
12. Community Development Council – ARGO District FGD 3
13. Interviewee 3
14. Interviewee 5
15. Interviewee 7

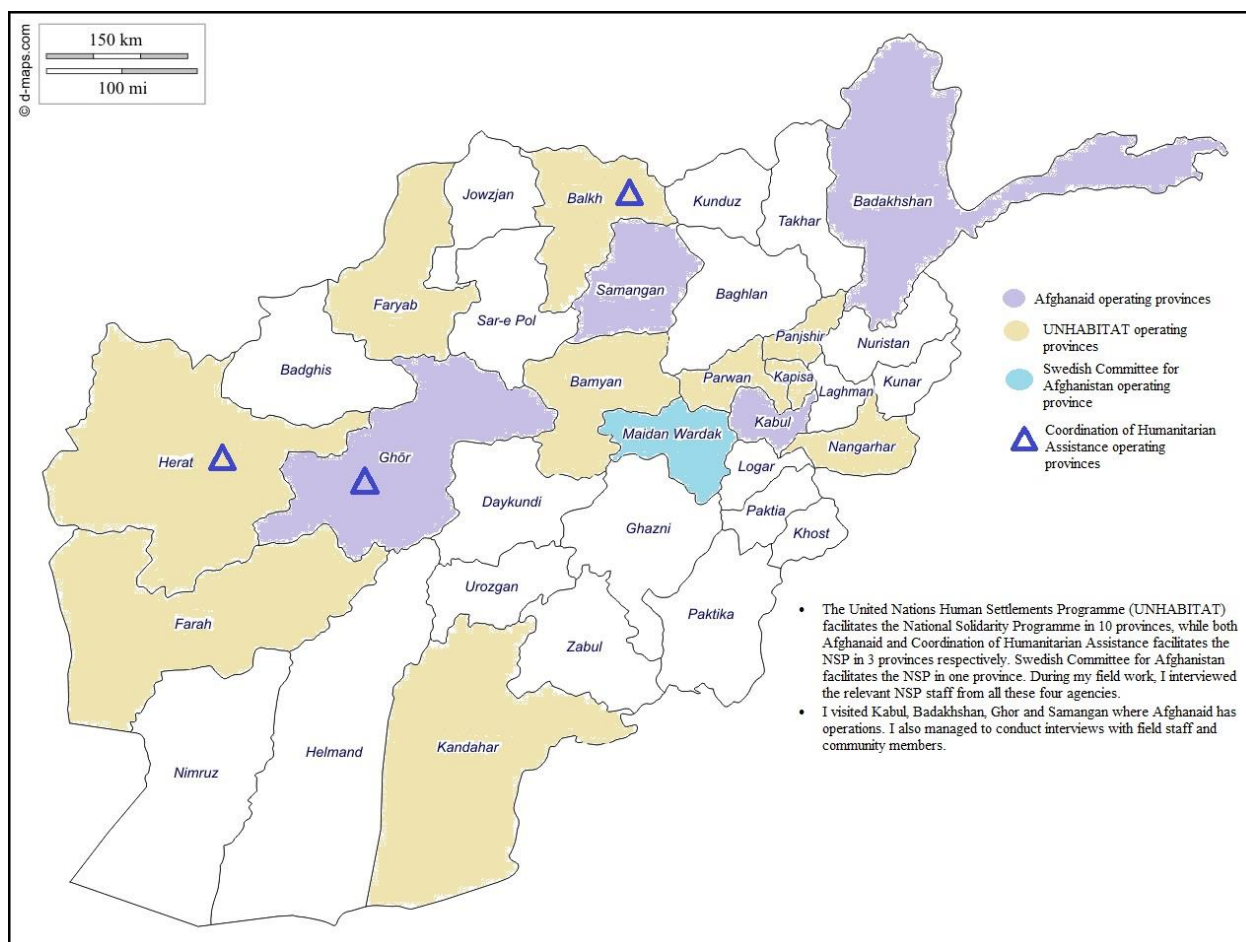
d. Samangan province

16. Interviewee 9

e. Ghor province

17. Interviewee 8
18. Interviewee 10
19. Community Development Council (CDC) Shahrak District FGD 4
20. Community Development Council (CDC) from Dolaina District FGD 5

7.4. Annex Four



7.5. Annex Five

List of Human Rights treaties Afghanistan has ratified			
Number	Name of Treaty	Signature	Ratification
1	International Convention on the Elimination of All Forms of Racial Discrimination	1969	1983
2	International Covenant on Civil and Political Rights	1976	1983
3	International Covenant on Economic, Social and Cultural Rights	1976	1983
4	Convention on the Elimination of all Forms of Discrimination Against Women	1981	1983
5	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1987	1987
6	Convention on the Rights of the Child	1990	1994
7	Convention on the Rights of Persons with Disabilities	2008	2012
	The Office of the United Nations Commissioner for Human Rights - http://indicators.ohchr.org/		